

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6103 / September 6, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21026**

**In the Matter of**

**AVENTURA CAPITAL  
MANAGEMENT, LLC,**

**Respondents.**

**CORRECTED ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTIONS 203(e) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A CEASE-  
AND-DESIST ORDER**

**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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Aventura Capital Management, LLC (“Aventura Capital” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Aventura Capital’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Summary

1. These proceedings arise out of breaches of fiduciary duty by Aventura Capital, a registered investment adviser, in connection with the receipt of fees by its affiliate Aventura Securities, LLC (“Aventura Securities”), a registered broker-dealer, from Aventura Capital’s advisory clients’ investments. At various times from December 2015 to June 2022, Aventura Securities received compensation including: (1) fees Aventura Securities received when Aventura Capital purchased, recommended, or held for Aventura Capital’s advisory clients mutual fund share classes that paid fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (“12b-1 fees”) instead of available lower-cost share classes of the same funds that did not charge these fees; (2) fees Aventura Securities received from its clearing broker as a result of Aventura Capital’s advisory clients’ uninvested cash being swept into share classes of certain money market mutual funds (“money market funds”) instead of lower-cost share classes of the same money market funds that did not result in the payment of fees to Aventura Securities that were available to clients; and (3) mark-ups and mark-downs that Aventura Securities received when Aventura Capital directed certain trades on behalf of clients without disclosing the capacity in which Aventura Capital was acting, without providing prior written disclosure to, and obtaining consent from clients, in advance of each transaction, and without disclosing the compensation that Aventura Securities received from such trading.

2. First, from December 2015 to June 2022 (the “Relevant 12b-1 Period”), Aventura Securities received 12b-1 fees from mutual fund share classes that Aventura Capital had purchased, recommended, or held for advisory clients that charged those fees, instead of lower-cost share classes of the same funds that were available to the clients. During the Relevant 12b-1 Period, Aventura Capital did not adequately disclose in its Forms ADV or otherwise its practice to select mutual fund share classes that paid 12b-1 fees, or the resulting conflict of interest. Aventura Capital, although eligible to do so, did not self-report this 12b-1 fee related conflict of interest to the Commission pursuant to the Division of Enforcement’s (the “Division”) Share Class Selection Disclosure Initiative (“SCSD Initiative”).<sup>2</sup>

3. Second, from March 2017 to April 2020 (the “Relevant Cash Sweep Period”), Aventura Securities received revenue sharing payments from its clearing broker based on the amount of Aventura Capital’s advisory client assets invested in certain share classes of money market funds used as cash sweep vehicles. During the Relevant Cash Sweep Period, Aventura Securities’ agreement with the clearing broker provided options to sweep Aventura Capital’s advisory clients’ cash into share classes of the same money market funds that had lower costs to fund investors and did not pay revenue sharing. Aventura Capital selected higher-cost revenue sharing money market fund share classes instead of lower-cost share classes of the same money market funds that did not pay revenue sharing to Aventura Securities and were available to advisory clients. Aventura Capital did not disclose this conflict of interest in its Forms ADV or otherwise.

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<sup>2</sup> See Div. of Enforcement, U.S. Sec. & Exch. Comm’n, *Share Class Selection Disclosure Initiative*, <https://www.sec.gov/enforce/announcement/scsd-initiative> (last modified Feb. 12, 2018).

4. Third, from at least December 2015, Aventura Capital, by causing certain of its advisory clients to invest in higher-cost share classes of mutual funds that paid 12b-1 fees and money market funds that resulted in revenue sharing payments when fund share classes were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, breached its duty to seek best execution for those transactions.

5. Next, at times since at least December 2015, Aventura Securities received mark-ups and mark-downs when Aventura Capital engaged in securities transactions with its clients on a principal basis through its affiliated broker-dealer, without providing prior written disclosure to, or obtaining consent from, its clients in advance of each transaction.

6. During each of the relevant periods, Aventura Capital also failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with mutual fund and money market fund share class selection and principal transaction practices, or disclosure of these practices to advisory clients.

### **Respondent**

7. Respondent Aventura Capital Management, LLC (“Aventura Capital”) is a Florida limited liability company based in Fort Lauderdale, Florida. Aventura Capital has been registered with the Commission as an investment adviser since November 29, 2006. In its March 31, 2022 Form ADV, Part 1 Aventura Capital reported regulatory assets under management of \$122,785,613. Aventura Capital provides advisory services through its investment adviser representatives (“IARs”), all of whom are registered representatives of Aventura Securities.

### **Related Parties**

8. Aventura Securities, LLC (“Aventura Securities”) is a Florida limited liability company based in Fort Lauderdale, Florida. Aventura Securities has been registered with the Commission as a broker-dealer since January 16, 2007 (CRD #142374).

9. Aventura Holdings, LLC (“Aventura Holdings”) is a Florida limited liability company based in Fort Lauderdale, Florida. Aventura Holdings is the sole owner of Aventura Capital and Aventura Securities. The two companies are under common control.

### **Mutual Fund Share Class Selection and 12b-1 Fees**

9. Mutual funds typically offer investors different types of shares or “share classes.” Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

10. For example, some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are

included in a mutual fund's total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund's assets on an ongoing basis and paid to the fund's distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

11. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")).<sup>3</sup> An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

12. During the Relevant 12b-1 Period, Aventura Capital and its IARs routinely purchased, recommended or held<sup>4</sup> for clients mutual fund share classes that charged 12b-1 fees when lower-cost share classes of those same funds were available to those clients. Aventura Securities received 12b-1 fees that it would not have collected had Aventura Capital's advisory clients been invested in the available lower-cost share classes.

13. The 12b-1 fees Aventura Securities received created an incentive for Aventura Capital to recommend its advisory clients buy or hold share classes that paid 12b-1 fees over other share classes of the same mutual funds that did not pay 12b-1 fees when rendering investment advice to Aventura Capital's advisory clients.

14. As an investment adviser, Aventura Capital was obligated to disclose all material facts to advisory clients, including any conflicts of interest between the adviser and its clients, that could affect the advisory relationship and how those conflicts could affect the advice Aventura Capital provided its clients. To meet this fiduciary obligation, Aventura Capital was required to provide advisory clients with full and fair disclosure that was sufficiently specific so that the advisory clients could understand the conflicts of interest concerning Aventura Capital's advice about investing in different share classes of mutual funds or money market funds, and could have an informed basis on which advisory clients could consent to or reject the conflicts.

15. During part of the Relevant 12b-1 Period, from at least December 2015 to January 2019, Aventura Capital's Form ADV Part 2A disclosed that Aventura Securities "may receive a portion of certain" fees imposed by mutual funds, but did not disclose that 12b-1 fees were among those fees. Aventura Capital's investment management agreement disclosed that Aventura Capital or its IARs "may receive a portion of the 12b-1 distribution fees." However, during this period, Aventura Capital's Form ADV Part 2A brochure and investment management agreement did not

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<sup>3</sup> Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as "Class F2," "Class Y" and "Class Z" shares. As used in this Order, the term "Class I shares" refers generically to share classes that do not charge 12b-1 fees.

<sup>4</sup> In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

disclose that Aventura Capital would routinely select mutual fund share classes that would pay 12b-1 fees rather than lower-cost share classes of the same mutual fund. The brochure and investment management agreement also did not adequately disclose the conflicts of interest that arose when Aventura Capital invested advisory clients in a mutual fund share class that would generate 12b-1 fee revenue for Aventura Securities, while share classes of the same funds that did not pay 12b-1 fees were available to its advisory clients.

16. Beginning in January 2019, Aventura Capital stated in its Form ADV Part 2A brochure and investment management agreement that “[i]n general, when available, the Firm will select the lowest cost share available (generally class “I” shares) for customer investment,” and that if Aventura Capital selected “a Class A share,” then Aventura Securities would receive compensation in the form of a 12b-1 fee. Aventura Capital also disclosed in its Form ADV Part 2A that it “may rebate” 12b-1 fees to advisory clients, and “[i]n determining the potential rebate the Firm will review items that impact the overall cost of purchase to the customer which may include order processing, handling and execution.” Last, Aventura Capital disclosed in its Form ADV Part 2A that “[i]n the event a customer holds a more expensive class of share the Firm will transition to lower cost classes at the direction of the customer,” and that it “will work with customers to transition to lower cost [mutual fund share class] options considering any specific tax related matters.” For most of the period from January 2019 forward, Aventura Capital also disclosed that its share class selection practices “may create” a conflict of interest.

17. Aventura Capital’s Form ADV Part 2A disclosures beginning in January 2019 about its mutual fund share class practices were misleading because they did not accurately reflect Aventura Capital’s actual practices and did not adequately disclose Aventura Capital’s conflicts of interest with respect to its actual practices. Most importantly, Aventura Capital did not select the lowest-cost share class available, but continued routinely to select share classes that paid 12b-1 fees when share classes of the same funds that did not pay 12b-1 fees were available to its advisory clients. Moreover, with few exceptions, Aventura Capital did not convert client holdings to lower-cost share classes. Last, Aventura Capital did not disclose that its general practice was to select mutual fund share classes that paid 12b-1 fees to Aventura Securities instead of passing on to its advisory clients certain transaction costs imposed by Aventura Securities’ clearing broker for the purchase or sale of all securities. Aventura Capital’s failure to disclose its actual practices with respect to mutual fund share class selection and client trading costs meant that its clients who owned mutual fund share classes that charged 12b-1 fees could not provide informed consent with respect to these practices.

18. After 2019, Aventura Capital continued to revise its disclosures with respect to its conflict of interest concerning 12b-1 fees, but Aventura Capital’s revised disclosures did not accurately reflect its practices. Aventura Capital’s disclosures were therefore not sufficient to permit clients to consent to its practices and the resulting conflicts of interest. Beginning in May 2020, Aventura Capital and Aventura Securities filed and delivered to clients a Form CRS that stated “Aventura Securities, LLC will charge a trailing fee on Mutual Fund purchases, commonly known as a 12b-1 Fee, to offset transactional expenses associated with processing orders for our firm’s Affiliate advisory clients,” that Aventura Securities “nets the out of pocket cost to the

customer from the 12b-1 fee against internal operating costs to the client's benefit and may refund the difference," and that share class selection "creates a conflict of interest in the event a lower cost share is not selected." Aventura Capital did not disclose that Aventura Securities would refund to advisory clients only the amount of 12b-1 fees paid from the clients' holdings that exceeded the cost of both the clearing broker's transaction costs and a mark-up that Aventura Securities might have charged on top of those transaction costs. Also, at the same time, Aventura Capital continued to make statements, both elsewhere in the Form CRS and in its brochures and investment management agreements, that it would generally select the lowest cost mutual fund share class available. This was misleading because it was not Aventura Capital's general practice to purchase the lowest cost mutual fund share class available to its advisory clients.

### **Cash Sweep Share Class Selection and Revenue Sharing Payments**

19. A sweep account ("Sweep Account") is a money market mutual fund or bank account used by broker-dealers to hold uninvested cash (*e.g.*, incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money. During the Relevant Cash Sweep Period, Aventura Capital recommended that clients choose certain money market fund share classes to hold uninvested cash in the clients' Sweep Accounts. A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used in Sweep Accounts as cash sweep vehicles. The investment yields and expense ratio of a money market fund will differ from fund to fund.

20. During the Relevant Cash Sweep Period, the clearing broker agreed to share with Aventura Securities a portion of the revenue the clearing broker received in connection with certain share classes of money market funds offered to Sweep Accounts. Another share class of the same money market fund was available to Aventura Capital clients that did not pay Aventura Securities any revenue sharing for client assets and had lower expenses and higher yields for Aventura Capital clients than the revenue sharing money market fund share classes.

21. The amount of revenue sharing Aventura Securities received from the clearing broker differed depending on the share class of the money market fund that Aventura Capital recommended to its advisory clients and the amount of assets advisory clients, who were Aventura Securities brokerage customers, held in the share class. During the Relevant Cash Sweep Period, even though a share class of the same money market fund that did not result in revenue sharing payments was always available to its clients, Aventura Capital routinely purchased, recommended or held for clients share classes of money market funds for cash sweep vehicles that paid revenue sharing to Aventura Securities rather than those that did not.

22. The payments the clearing broker made to Aventura Securities for higher-cost revenue sharing money market fund share classes created an incentive for Aventura Capital to recommend advisory clients purchase or hold a money market fund share class that paid revenue sharing over share classes of the same money market funds that did not pay revenue sharing.

23. During the Relevant Cash Sweep Period, Aventura Capital did not disclose in its Form ADV Part 2A brochures or elsewhere that Aventura Securities received revenue sharing from money market funds used in Sweep Accounts, nor did it disclose the conflicts of interest that arose when it invested advisory clients in a money market fund share class that would generate revenue sharing for Aventura Securities while share classes of the same funds that did not generate this revenue were available to its clients.

### **Best Execution Failures**

24. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.<sup>5</sup>

25. From at least December 2015, by causing certain of its advisory clients to invest in share classes of mutual funds that paid 12b-1 fees and money market funds that resulted in revenue sharing payments from the clearing broker to Aventura Securities when share classes were available that presented a more favorable value under the particular circumstances in place at the time of the transactions, Aventura Capital violated its duty to seek best execution for those transactions.

### **Principal Transactions**

26. At times from at least December 2015, Aventura Capital engaged in more than 1300 fixed-income transactions on a riskless principal basis with 77 advisory client accounts without providing prior written disclosure to, or obtaining transaction-by-transaction consent from, clients as required by Section 206(3) of the Advisers Act. With respect to each such transaction, Aventura Capital purchased or sold fixed income securities through Aventura Securities on behalf of Aventura Capital's advisory clients. Aventura Securities profited from these trades because it received the difference between the cost of the traded securities to Aventura Securities and the cost of the securities to Aventura Capital's advisory clients, in the form of mark-ups and mark-downs.

27. Aventura Capital represented to clients in client brochures, Forms ADV Part 2A, that principal transactions via its affiliated broker-dealer Aventura Securities were subject to proper disclosures required by Aventura Capital's written procedures. In turn, Aventura Capital's Policies and Procedures Manual acknowledged that the firm may engage in principal transactions, defined in the manual to include transactions through an affiliated broker-dealer (like Aventura Securities), but that such transactions would require "disclosure regarding each principal transaction including information about adviser's conflict of interest, the price of the transaction or current quoted price, market best price information regarding security [*sic*] and, if applicable, any commission or mark-up/mark-down charges" and that Aventura would obtain client consent. Aventura Capital, however, did not disclose its mark-up or mark-down amount for each principal transaction and did not obtain affirmative client consent prior to the completion of each transaction.

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<sup>5</sup> See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

28. Aventura Securities disclosed to clients on trade confirmations that if a trade indicated that it acted as principal, then “we earn a markup and [Aventura Capital] must obtain your consent.” It provided that the markup would be available upon request. It further stated that clients could withhold consent and cancel the trade by contacting Aventura Securities before the settlement date, and that if clients did not cancel then Aventura Capital “will assume receipt of your affirmative consent.” This disclosure was misleading because it suggested to clients that they had an obligation to opt out of principal transactions, when Aventura Capital instead had affirmative notice and consent obligations, as reflected in its own written procedures.

### **Compliance Deficiencies**

29. During each of the Relevant Periods, Aventura Capital failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its practices regarding mutual fund and money market fund share class selection and principal transactions, and disclosures about those practices.

### **Disgorgement**

30. The disgorgement and prejudgment interest ordered in Section IV.C. is consistent with equitable principles and does not exceed Respondent’s net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (“Exchange Act”).

### **Violations**

31. As a result of the conduct described above, Aventura Capital willfully<sup>6</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

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<sup>6</sup> “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).



32. As a result of the conduct described above relating to principal transactions, Aventura Capital willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from executing securities transactions with a client on a principal basis without disclosing to such client in writing, before the completion of such transaction, the capacity in which it is acting and obtaining the consent of the client to such transaction.

33. As a result of the conduct described above, Aventura Capital willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Undertakings**

34. Respondent has undertaken to:
- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection, cash sweep vehicle selection, 12b-1 fees, revenue sharing, and principal transactions.
  - b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost mutual fund share class or lower-cost cash sweep vehicle and move clients as necessary.
  - c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with making recommendations and selection of mutual fund share classes and cash sweep vehicles in the best interests of advisory clients, and principal transactions, and disclosures to advisory clients concerning each of these matters.
  - d. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices discussed above (hereinafter, "affected investors") of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
  - e. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street,

24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

- f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

#### IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.
- B. Respondent is censured.
- C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$938,756.59, as follows:
  - (i) Respondent shall pay disgorgement of \$623,324.17 and prejudgment interest of \$90,432.42, consistent with the provisions of this Subsection C.
  - (ii) Respondent shall pay a civil money penalty in the amount of \$225,000, consistent with the provisions of this Subsection C.
  - (iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest referenced in Section C.(i) – (ii) above for distribution to affected investors. 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 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 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 Aventura Capital by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(iv) Respondent shall pay the disgorgement, prejudgment interest and civil penalties ordered in this Subsection C, less monies already distributed to affected investors, in the following installments:

- a. Within ten (10) days of the entry of this Order, Respondent shall pay \$250,000; and shall pay \$200,000 within 90 days of the entry of the Order, \$160,000 within 180 days of the entry of the Order, \$160,000 within 270 days of the entry of the Order, and \$168,756.59 within 360 days of the entry of the Order, plus all accrued interest.
- b. Respondent shall deposit the payments of the disgorgement, prejudgment interest, and civil penalty (the “Fair Fund”), into an escrow account at a financial institution not unacceptable to the Commission staff, and shall provide the Commission staff with evidence of such deposits in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name of the Fair Fund. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 on unpaid amounts of disgorgement and prejudgment interest and/or pursuant to 31 U.S.C. § 3717 on unpaid amounts of the civil penalty. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

(v) Respondent shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(vi) Respondent shall distribute from the Fair Fund to each affected investor an amount representing each affected investor’s pro rata share of the 12b-1 fees attributable to the affected investor during the Relevant 12b-1 Period, the revenue

sharing payments attributable to the affected investor during the Relevant Cash Sweep Period, and the mark-ups/mark-downs attributable to the affected investor during the Relevant Principal Transaction Period, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Aventura Capital or any of its IARs, Aventura Securities, Aventura Holdings, or any of the entities’ current or former officers or directors, has a financial interest.

(vii) Respondent shall, within ninety (90) days of the entry of the Order, submit the Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholdings; (3) the amount of any *de minimis* threshold to be applied; and (4) if funds are available, the amount of reasonable interest paid. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(ix) Respondent shall complete the disbursement of all amounts payable to affected investors within sixty (60) days of the date the Commission staff accepts the Payment File, or within sixty (60) days of the date on which Respondent completes the payments as set forth in Section IV.C.(iv), whichever is later, unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.

(x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor account or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph (xii) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

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

(b) 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

(c) 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

Payments by check or money order must be accompanied by a cover letter identifying Aventura Capital Management, LLC as the 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 Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent shall be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and payment requirements of the Fair Fund, including but not limited to (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act ("FATCA"). Respondent may retain any professional services necessary. The costs and expenses for tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xii) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraph 34.a. – 34.e., above.

By the Commission.

Vanessa A. Countryman  
Secretary