

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74305 / February 19, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4026 / February 19, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31459 / February 19, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16389

In the Matter of

VCAP Securities, LLC, and
Brett Thomas Graham,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b)(4), 15(b)(6),
AND 21C OF THE SECURITIES EXCHANGE
ACT OF 1934, SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940, 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 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against VCAP Securities, LLC (“VCAP”), and Sections 15(b)(6) and 21C of the Exchange Act, Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Brett Thomas Graham (“Graham”).

II.

In anticipation of the institution of these proceedings, VCAP and Graham (collectively, “Respondents”) have submitted Offers of Settlement (“Offers”) 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b)(4), 15(b)(6), and 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, 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 Respondents' Offers, the Commission finds¹ that:

Summary

1. This matter involves a scheme by VCAP and Graham to acquire certain securities from auctions of collateralized debt obligations ("CDOs") that VCAP was conducting as liquidation agent. VCAP and Graham's actions in the auctions improperly benefitted funds managed by Vertical Capital, LLC ("Vertical"), VCAP's affiliated investment adviser. The conduct involved Graham arranging for a separate broker-dealer ("Third-Party B-D") to place bids on behalf of Vertical in the CDO liquidations run by VCAP, as VCAP and its affiliates were not permitted to bid under the terms of the relevant engagement agreements. As the liquidation agent for the auctions, VCAP had access to confidential bidding information from other bidders. Taking advantage of this access and information, Graham waited for the majority of the bids to come in from the other auction participants, and then instructed Third-Party B-D to bid on the bonds Graham wanted for Vertical-managed funds, at prices that were often slightly higher than the highest bid from other participants. After winning the bonds in the auction, Third-Party B-D would then immediately sell the bonds to the Vertical funds at a small markup.

2. In the course of this conduct, Graham and VCAP made material misrepresentations to the trustees of the various CDOs for which VCAP served as liquidation agent. Graham executed, on behalf of VCAP, various engagement agreements in which he falsely represented that VCAP and its affiliates would not bid in the auctions and would not misuse confidential information and/or bidding information afforded to VCAP as the liquidation agent. At the time he executed the final agreements, however, Graham had already communicated multiple times with Third-Party B-D about submitting bids on behalf of Vertical. VCAP also provided the various trustees with documents that did not disclose that its affiliate Vertical was the winning bidder.

3. In addition, in one particular auction, Graham provided one non-affiliated bidder with favorable treatment with respect to a security that that bidder was very interested in obtaining.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Although the sales person at the bidding entity told Graham that his traders were anxious to win the bond, and that the bidder could increase its bid if necessary, Graham instead instructed him to cut the bid in half. Graham neither sought permission from the trustee nor informed it about his instructions to halve the bid. As a result, the trustee received half as much in proceeds for that bond as it would have otherwise.

Respondents

4. VCAP Securities, LLC (“VCAP”) is a broker-dealer registered with the Commission. On December 24, 2014, it filed a Form BD-W. It was organized in Georgia, and maintains its principal place of business in New York, New York. VCAP is over 99% indirectly owned by Graham through a holding company called BD Partner Holdings, LLC. The economic interest in and control over VCAP are shared by Graham and three other partners.

5. Brett Thomas Graham (“Graham”) is currently the CEO of VCAP, and the managing partner, Chief Investment Officer, and a portfolio manager of Vertical. He has no disciplinary history. Graham indirectly owns over 99% of VCAP and 55.8% of Vertical, and has an economic interest of 33% and a voting interest of 25% in each. He holds Series 7, 24, and 63 licenses. Graham is 51 years old, and a resident of New York, New York.

Other Relevant Entities

6. Vertical Capital, LLC (“Vertical”) is a registered investment adviser. It is organized in Delaware, and maintains its principal place of business in New York, New York. Vertical is wholly owned by VCAP Partners LLC, which is 55.8% owned by Graham. The economic interest in and control over Vertical are shared by Graham and the same three partners that also share in the economic interest and control of VCAP.

Background

7. This matter concerns five auctions that VCAP conducted as liquidation agent during 2012. For each of these auctions, VCAP was hired to liquidate the assets of a CDO by the respective CDO trustees. Prior to each liquidation, VCAP entered into an agreement with the trustee governing the terms of VCAP’s role as liquidation agent. As the CEO of VCAP, Graham had the primary responsibility for reviewing and executing these agreements on behalf of VCAP.

8. During the relevant time period, Graham was a portfolio manager and the chief investment officer of Vertical, a registered investment adviser and asset manager. The main focus of Vertical’s investment management activities has been two private funds: Resolution Credit Opportunities Fund I, which was formed in the fall of 2009, and Resolution Credit Opportunities Fund II, which was formed in late 2011 (collectively, the “Funds”). In addition, during the relevant time period, Vertical served as the investment manager for four separately managed accounts (collectively, the “SMAs”).

Vertical Bidding in VCAP-Run Liquidations

9. Since their inception, Vertical's Funds and SMAs have generally invested in illiquid, non-agency mortgage-backed securities. Graham has been principally responsible for these investment decisions. These same types of securities were often included in the CDOs that VCAP was hired to liquidate.

10. Graham knew or was reckless in not knowing that VCAP and its affiliates could not bid in a liquidation for which VCAP served as liquidation agent. The liquidation agent agreements that Graham signed as CEO on behalf of VCAP for each of the five CDO liquidations all prohibited VCAP or its affiliates from bidding in the liquidations, and required VCAP to keep the bidding information it received confidential during the auction. One of the agreements also expressly prohibited giving preferential or favorable treatment to any bidder.

11. In addition to the prohibitions in the liquidation agent agreements, VCAP's own compliance manual also prohibited bidding by VCAP and its affiliates. The VCAP compliance manual, dated December 19, 2011, provided, among other things, the following:

Possible Conflicts of Interest

To prevent even the appearance of any conflict of interest, VCAP and its affiliates and employees will not bid in an auction liquidation run by VCAP.

VCAP's compliance manual was provided to each employee of VCAP on at least an annual basis.

12. To carry out his plan to have Vertical bid in VCAP-run auctions, Graham contacted an individual that he had worked with previously ("Broker"), who currently worked at Third-Party B-D, which was based in the United Kingdom. Graham never consulted with counsel or with VCAP's chief compliance officer to discuss the permissibility of the arrangement. Nor did Graham or anyone else at VCAP discuss with any of the CDO trustees that hired VCAP whether Vertical could bid in the VCAP-run auctions through Third-Party B-D.

13. Before the first liquidation in which Third-Party B-D bid on behalf of Vertical, Broker asked Graham whether the trustee was aware of the arrangement. Broker asked, "[W]ill the seller know or care that a B/D maybe be [sic] biddin for some of your funds?" To which, Graham responded, "[N]o... Auction, so high bid wins. Auction was published in WSJ." Broker understood Graham's response to mean that the arrangement was permissible.

14. A few weeks thereafter, Broker inquired a second time about the permissibility of the arrangement. Broker asked, "[Third-Party B-D's compliance] understands the confidentiality issue and why you are in the middle, but wants to confirm therefore your seller allows your funds to bid in the bwic, for us to facilitate..."² Graham responded, "[Y]es," even though Graham had never asked any of the CDO trustees whether this arrangement was permissible.

² The term "bwic" means, "bid wanted in competition."

15. Graham generally followed the same pattern with respect to each of the five CDO liquidations in which he had Third-Party B-D bid on behalf of Vertical. Graham generally waited until he had received the majority of the bids from the other auction participants, and then would tell Third-Party B-D which bonds in the CDO liquidation to bid on and at what price. Having access to the other auction participants' bids, Graham was able to, and in several instances did, give bid prices to Third-Party B-D that were slightly higher than the highest bid from the other bidders. This conduct is illustrated in Table 1 below, which shows the time and amounts for some of Vertical's bids through Third-Party B-D in an auction list from one of the five CDO liquidations at issue.

TABLE 1

	Bidder	Bid	Time
Bond A	Bidder A1	8.0781	2:24 p.m.
	Third-Party B-D	8.5000	2:58 p.m.
Bond B	Bidder B1	3.0156	2:24 p.m.
	Third-Party B-D	3.2500	2:59 p.m.
Bond C	Bidder C1	7.59375	2:23 p.m.
	Third-Party B-D	7.75000	3:04 p.m.

As demonstrated above, Third-Party B-D bid after the other auction participants' bids were received by VCAP. In addition, Third-Party B-D's bids were often slightly higher than the high bid from the other auction participants, ensuring that Vertical would win the bonds Graham wanted but not pay too much.

16. After receiving instructions from Graham, Third-Party B-D would then submit the bids in the same manner as all of the other auction participants. However, unbeknownst to the trustees, Third-Party B-D was bidding on behalf of Vertical. Third-Party B-D was usually the last, or one of the last, participants to submit its initial bids in the auction.

17. At times, another auction participant would submit or improve a bid after Graham had given his instructions to Third-Party B-D. If a later bid was higher than Third-Party B-D's bid for a bond that Graham was interested in winning, Graham at times instructed Third-Party B-D to resubmit its bid at an amount higher than that other bid. This conduct is illustrated in Table 2 below, which shows some of Third-Party B-D's bids for another list in one of the five CDO liquidations at issue. On this list, Graham instructed Third-Party B-D to resubmit bids in several instances, in order to top subsequent higher bids from other auction participants.

TABLE 2

	Bidder	Bid	Time
Bond A	Third-Party B-D	42.01	11:25 a.m.
	Bidder A1	45	11:33 a.m.
	Third-Party B-D	45.15	12:01 p.m.
Bond B	Bidder B1	43.03125	10:48 a.m.
	Third-Party B-D	43.25	11:30 a.m.
	Bidder B2	43.375	12:10 p.m.
	Third-Party B-D	43.45	12:20 p.m.
Bond C	Third-Party B-D	34.01	11:23 a.m.
	Bidder C1	34.53125	11:29 a.m.
	Third-Party B-D	34.625	11:50 a.m.

18. In one particular instance, Graham instructed Third-Party B-D to resubmit its bid for a lower amount because Graham subsequently received bidding information indicating that the next high bid for that particular bond had decreased. Thus, he knew that Third-Party B-D could win the bond for less than what it had initially bid. This is illustrated in Table 3 below.

TABLE 3

	Bidder	Bid	Time
Bond X	Third-Party B-D	28.50	11:21 a.m.
	Bidder X1	24.00	12:00 p.m.
	Third-Party B-D	24.50	12:09 p.m.

19. Immediately after each auction, Vertical's Funds and SMAs purchased from Third-Party B-D any of the bonds that Third-Party B-D won in the auction, in allocations designated by Graham and at a slight mark-up as determined by Graham.

20. At the conclusion of the auction for each list, VCAP sent an e-mail to the trustee attaching a spreadsheet listing the winner and second highest bid for each bond, as well as listing each participant and their final bids. This was the manner in which VCAP communicated the bids to the trustee, and requested the trustee's approval for awarding the winners. Graham never told the trustee that Third-Party B-D was bidding on behalf of Vertical, nor did he inform the trustee that he was using pricing information from other bids to determine the amount of the bid price for Third-Party B-D.

21. Overall, Vertical's Funds and SMAs acquired 23 securities, paying nearly \$12 million, through the 5 CDO liquidations by placing prohibited bids. In total, VCAP received

\$1,182,839 in fees from the CDO trustees for conducting the 5 liquidations, and Graham personally received 10% of this amount, approximately \$120,000, for originating the business.

VCAP Gives An Auction Participant Preferential Treatment

22. During the course of a CDO liquidation for which VCAP was the liquidation agent, Graham gave preferential treatment to one auction participant (“Preferred Participant”) that resulted in lower proceeds to the trustee.

23. After the start of the auction, the sales person at Preferred Participant (“Salesman”) who was responsible for covering Vertical, sent a Bloomberg instant message to inform Graham that Preferred Participant was especially interested in winning a particular bond. Salesman messaged Graham that the bond was very important to Preferred Participant, and asked Graham to let him know where Preferred Participant needed to be in order to win, indicating that Preferred Participant would be willing to bid higher if necessary. Graham, seeing that the other bids for that particular bond were just fractions of Preferred Participant’s bid, responded to Salesman and told him to cut Preferred Participant’s bid in half.

24. Preferred Participant thereafter changed its bid for the bond to half of its original bid, and resubmitted the bid. Preferred Participant won the bond at the reduced price, which was about 10 points higher than the next highest bid.

25. Prior to instructing Preferred Participant to cut its bid in half, Graham did not seek permission from the trustee of the CDO that was being liquidated. Graham also never informed the trustee that it was receiving half of what it would have otherwise received for the bond, had Graham not instructed Preferred Participant to cut its bid in half.

26. As a result of the conduct described above, VCAP willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

27. As a result of the conduct described above, Graham willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which make it unlawful, in connection with the purchase or sale of any security, to employ any device, scheme, or artifice to defraud; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Civil Penalties

28. VCAP has submitted a sworn Statement of Financial Condition dated November 21, 2014, and other evidence and has asserted its inability to pay a civil penalty.

Undertakings

29. Graham has undertaken to provide written certification, signed by Graham under penalty of perjury, that he is in compliance with item IV.C. below. Such certification must be provided to the Commission staff every ninety days from the date of entry of this Order, for a period of one year thereafter.

30. Graham has undertaken to retain, not at the Commission's expense, a qualified independent consultant (the "Consultant") not unacceptable to the Commission staff to do the following:

- a. Provide a memorandum that is to be distributed to all employees and partners of Vertical prior to or by the date of entry of this Order: (i) outlining the parameters of Graham's limited role in Vertical, as specified in item IV.C. below, and (ii) giving instructions that each employee and partner of Vertical must strictly comply with the terms of such limited role by Graham.
- b. Provide training to all Vertical employees and partners regarding the limitations and restrictions placed on Graham's conduct with respect to Vertical, as specified in item IV.C. below.
- c. Submit a report concerning Graham's compliance with the terms of item IV.C. below, to the Commission staff every ninety days from the date of entry of this Order, for a period of one year thereafter. In connection with the preparation of such reports, and to confirm that Graham is in compliance with item IV.C. below, Consultant will, at least: (i) conduct a review of all e-mail communications and instant messages to or from Graham, and (ii) interview Graham and the employees and partners of Vertical about Graham's activities.
- d. Establish an e-mail hotline for Vertical employees and partners to report any potential violations of Graham's limited role with Vertical, as specified in item IV.C. below. Consultant will investigate any reports of potential violations, and disclose any such reports or investigations in its periodic reports to the Commission staff.
- e. Require Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of

the engagement, Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Vertical, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist Consultant in performance of its duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Vertical, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

31. Graham shall certify, in writing, compliance with the undertakings set forth above in items 30 and 31. 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 Graham agrees to provide such evidence. The certification and supporting material shall be submitted to Andrew Sporkin, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

32. In determining whether to accept the Offers, the Commission has considered these undertakings.

IV.

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

Accordingly, pursuant to Sections 15(b)(4), 15(b)(6), and 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. VCAP cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Graham cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

C. Graham be, and hereby is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter

for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; with the right to apply for reentry after three years to the appropriate self-regulatory organization, or if there is none, to the Commission;

- a. provided however, that Graham may, for a period of one year from the entry of this Order, continue to be employed by Vertical solely for the purpose of assisting Vertical in the sale, or transfer to independent managers, of securities and positions held by any funds or accounts managed by Vertical, as of the date of the entry of this Order. During the one-year carve-out period, all sales by Graham shall be subject to review and approval by Vertical prior to execution. During this one-year period of limited employment at Vertical, Graham may not carry out his employment activities on the premises of Vertical, and he must be located offsite from Vertical. Notwithstanding this limited employment role, the following restrictions will be placed upon Graham as of the date of the entry of this Order: (i) Graham may not serve on Vertical's Board of Directors, or in any officer, executive, or management role at Vertical; (ii) Other than for the limited purpose of selling securities and positions held by any funds or accounts managed by Vertical, as of the date of the entry of this Order, Graham may not have any role, input, authority, duties, or discussions as to the management of Vertical, any entity affiliated with Vertical, or any of Vertical's clients; (iii) Graham may not have any role in formulating, summarizing, discussing, or memorializing Vertical's marketing or management strategy; (iv) Graham may not have any authority to hire or fire employees of Vertical, or to negotiate or bind Vertical in any contracts; (v) Graham may not have any contact with current or prospective investors in any funds or accounts managed by Vertical regarding anything concerning Vertical or VCAP (other than current and former employees of Vertical who are also Vertical investors); (vi) Graham may not solicit capital on behalf of Vertical; (vii) Graham may not participate, consult, or assist with any purchase of securities; and (viii) Graham may not participate, consult, or assist with any sales of assets or positions that were purchased or acquired after the date of entry of this Order. Nothing herein shall prevent Graham from communicating with Vertical partners and counsel regarding any outstanding legal actions in which Vertical is a party.

D. VCAP is censured.

E. Any reapplication for association by Graham will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Graham, whether or not the Commission has fully or partially

waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

F. VCAP shall, within ten (10) days of the entry of this Order, pay disgorgement of \$1,064,555 and prejudgment interest of \$85,044 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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

Payments by check or money order must be accompanied by a cover letter identifying VCAP 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 Andrew Sporkin, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6013.

G. Based upon VCAP's sworn representations in its Statement of Financial Condition dated November 21, 2014, and other documents submitted to the Commission, the Commission is not imposing a penalty against VCAP.

H. Graham shall, within ten (10) days of the entry of this Order, pay disgorgement of \$118,284, prejudgment interest of \$9,449, and a civil money penalty in the amount of \$200,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or 31 USC §3717. 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

Payments by check or money order must be accompanied by a cover letter identifying Graham 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 Andrew Sporkin, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6013.

I. The Division of Enforcement (“Division”) may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether VCAP provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and pre-judgment interest, and/or the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by VCAP was fraudulent, misleading, inaccurate, or incomplete in any material respect. VCAP may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest, or a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

J. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraphs F and H above. Regardless of whether any such Fair Fund distribution is made, 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, Graham agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Graham’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Graham agrees that he 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 Respondents 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.

K. Graham shall comply with the undertakings enumerated in Section III, items 29 through 31 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Graham, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Graham under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Graham of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary