

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75401 / July 8, 2015**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3670 / July 8, 2015**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4138 / July 8, 2015**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 31710 / July 8, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16328**

**In the Matter of**

**VERO CAPITAL  
MANAGEMENT, LLC,  
ROBERT GEIGER,  
GEORGE BARBARESI, ESQ,  
and STEVEN DOWNEY, CPA**

**Respondents.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTIONS 203(e),  
203(f), AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF  
1940, SECTION 9(b) OF THE  
INVESTMENT COMPANY ACT OF  
1940 AS TO ALL RESPONDENTS,  
AND PURSUANT TO RULE 102(e) OF  
THE COMMISSION'S RULES OF  
PRACTICE AS TO STEVEN  
DOWNEY, AND INSTITUTING  
PUBLIC ADMINISTRATIVE  
PROCEEDINGS, MAKING FINDINGS,  
AND IMPOSING SANCTIONS  
PURSUANT TO SECTION 4C OF THE  
SECURITIES EXCHANGE ACT OF  
1934 AND RULE 102(e) OF THE  
COMMISSION'S RULES OF  
PRACTICE AS TO GEORGE  
BARBARESI**

**I.**

On December 29, 2014, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings against VERO Capital

Management, LLC (“VERO Capital”), Robert Geiger (“Geiger”), George Barbaresi (“Barbaresi”), and Steven Downey (“Downey,” and collectively, “Respondents”) pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) and against Downey pursuant to Rule 102(e)(1) of the Commission’s Rules of Practice (“Rules of Practice”). In addition, the Commission deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Barbaresi pursuant to Section 4C<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Rules of Practice.<sup>2</sup>

## II.

In response to the institution of these proceedings, 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 Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, Section 9(b) of the Investment Company Act of 1940 as to all Respondents, and Pursuant to Rule 102(e) of the Commission’s Rules of Practice as to Steven Downey, and Instituting Public Administrative Proceedings, Making Findings, and Imposing Sanctions Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice as to George Barbaresi (“Order”), as set forth below.

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<sup>1</sup> Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

<sup>2</sup> Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

### III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

#### A. SUMMARY

1. These proceedings arise out of Respondents' investment management activities on behalf of VERO Capital's advisory clients, the VERO Distressed ABS Opportunity Fund, B.V. ("Distressed Fund") and the VERO Distressed ABS Opportunity Master Fund, B.V. (the "Master Fund" and, collectively with the Distressed Fund, the "Funds").

2. Between late 2010 and 2011, Respondents caused the Funds to purchase three notes, with a total principal value of \$7 million, from VERO Asset Management, LLC ("VERO Asset"), an affiliate of VERO Capital. Because the Funds were purchasing the notes from a VERO Capital affiliate, the transactions constituted principal transactions under Section 206(3) of the Advisers Act, which require written notice and consent of the client before the completion of the transaction. The client's consent was not obtained before the completion of each individual transaction.

3. Thereafter, from 2012 to 2013, Respondents improperly diverted approximately \$2.8 million from the Funds for VERO Capital's wholly-owned subsidiary (the "VERO affiliate"), by causing the Funds to make a series of undocumented, undisclosed bridge loans to the VERO affiliate. At the same time Respondents were transferring the Funds' assets to the VERO affiliate, they were telling the Distressed Fund's investors and the Funds' director that they were winding down the Funds and actively working to liquidate their remaining investments for redemption. None of the Respondents disclosed the bridge loans to the Funds or any of their investors.

#### B. RESPONDENTS

4. **VERO Capital** is a Delaware limited liability company formed in 2003 with its principal place of business in New York, New York. It has been registered with the Commission as an investment adviser since 2008. VERO Capital is the investment manager to the Distressed Fund. Respondents Geiger, Downey, and Barbaresi are part owners of, and are associated with,<sup>3</sup> VERO Capital. VERO Capital has several wholly-owned subsidiaries, which included the VERO affiliate at all times relevant to the activities detailed herein.

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<sup>3</sup> A "person associated with" an investment adviser means "any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser . . ." See Advisers Act § 202(a)(17).

5. **Geiger**, age 55, resides in Wainscott, New York. Geiger is a co-owner of VERO Capital, and through it, the VERO affiliate, and has served as VERO Capital's managing member since 2003. From at least 2010 through December 2013 (the "Relevant Period"), Geiger served on VERO Capital's Investment Committee. Geiger was the VERO affiliate's managing member at all times relevant to the activities detailed herein as well. Geiger has previously held Series 3, 7, and 63 licenses, but he is not currently registered with the Commission in any capacity.

6. **Barbaresi**, age 59, resides in Dayton, Ohio. Barbaresi is a co-owner of VERO Capital, and through it, the VERO affiliate, and has served as VERO Capital's general counsel since December 2003. During the Relevant Period, Barbaresi served on VERO Capital's Investment Committee. Barbaresi is the VERO affiliate's general counsel as well. Barbaresi is an attorney in good standing licensed to practice in New York, Connecticut, and the District of Columbia

7. **Downey**, age 57, resides in Prospect, Kentucky. Downey is a co-owner of VERO Capital, and through it, the VERO affiliate, and has served as VERO Capital's chief financial officer since August 2004. During the Relevant Period, Downey served on VERO Capital's Investment Committee. Downey is the VERO affiliate's chief financial officer as well. Downey has been a certified public accountant licensed to practice in Florida and Alabama, although his license is not currently active in any jurisdiction and he does not hold himself out as a CPA.

#### C. OTHER RELEVANT ENTITIES

8. **The VERO affiliate** is a Delaware limited liability company formed in 2008 with its principal place of business in New York, New York. During the Relevant Period, the VERO affiliate was a wholly-owned subsidiary of VERO Capital. The VERO affiliate's officers and its marketing materials describe the company as a risk analytics business.

9. The **Distressed Fund** is a private company with limited liability incorporated under the laws of the Netherlands in 2008. The Distressed Fund is 100% owned by Stichting VERO Distressed ABS Opportunity Fund, a foundation established under the laws of the Netherlands, and incorporated by TMF Management, B.V. ("TMF Management"), a Dutch corporate services provider. The Distressed Fund aimed to achieve returns by investing in the affiliated Master Fund, which made investments in various securities.

10. The **Master Fund** is a private company with limited liability incorporated under the laws of the Netherlands in 2007. The Master Fund is 100% owned by Stichting VERO Distressed ABS Opportunity Master Fund, a foundation established under the laws of the Netherlands, and incorporated by TMF Management. The Master Fund's primary stated investment objective was to maximize returns by investing in a diverse portfolio of mortgage-related structured finance securities, whole mortgage loans and other fixed-income instruments.

11. **VERO Asset** is a Delaware limited liability company formed in 2003 with its principal place of business in New York, New York. During the Relevant Period, VERO Asset was a wholly-owned subsidiary of VERO Capital that made certain loans, including one to Cayden Holdings, LLC (“Cayden”), a VERO Capital affiliate, that the Funds later purchased.

12. **VERO Realty Advisors, LLC (“VERO Realty”)** is a Delaware limited liability company formed in 2012 with its principal place of business in New York, New York. During the Relevant Period, VERO Realty was a wholly-owned subsidiary of VERO Capital. Certain funds that VERO Capital diverted from the Funds to the VERO affiliate in 2013 were initially transferred to a bank account held in the name of VERO Realty.

13. **Cayden** is a Delaware limited liability company formed in 2007 with its principal place of business in Baltimore, Maryland. During the Relevant Period, Cayden was a wholly-owned subsidiary of VERO Asset. The Funds purchased a note from VERO Asset in November 2010 that evidenced a \$3 million loan that VERO Asset had made to Cayden (the “Cayden Note”). VERO Capital ultimately diverted to the VERO affiliate a portion of the money that was due to the Funds to repay the \$3 million loan.

14. **TMF Management** is a Dutch private company with limited liability headquartered in Amsterdam, The Netherlands. TMF Management served as director for the Distressed Fund and the Master Fund and provided management, corporate and administrative services to the Funds, with the exception of investment management services, which VERO Capital provided.

#### D. FACTS

##### Background

15. The Distressed Fund and the Master Fund are structured in a master-feeder relationship. The Distressed Fund is the feeder fund and aimed to generate returns by investing substantially all of its cash (raised from issuing notes to investors) in notes issued by the Master Fund. The Master Fund then used those proceeds to invest in mortgage-related finance securities and other distressed investments, as described below. Both the Distressed and Master Funds are Dutch companies each of whose shares are entirely owned by separate Dutch foundations, or “stichtings.” The stichtings were incorporated by TMF Management, a Dutch corporate services provider, which serves as the director for both Funds. The stichtings are legal entities without shareholders whose object is to hold the shares of the Funds and have overall control over the Funds’ management. However, the Funds, through TMF Management, delegated to VERO Capital the exclusive power and authority to manage the Funds’ investments on a discretionary basis.

16. VERO Capital marketed the Distressed Fund to three foreign investors in 2008, raising approximately \$75 million by selling them participating notes issued by the Fund, with the vast majority coming from two of the three investors. According to the Distressed Fund’s private placement memorandum (“PPM”), its principal investment

objective was to achieve returns by investing through the Master Fund in a diverse portfolio of mortgage-related finance securities, whole mortgage loans and other fixed income instruments, including rated or unrated and performing or distressed securities issued by issuers of collateralized debt obligations, and special situation investments. The Distressed Fund could invest in a broad array of assets, but the Distressed Fund's PPM stated that "[i]t is intended that the portfolio will consist of approximately 80% U.S. RMBS Securities and there will be no . . . corporate credit risk." The Distressed Fund's two biggest investors understood that the Fund's primary purpose was to invest in mortgage-backed securities.

17. With respect to transactions involving affiliates of VERO Capital, the PPM stated that VERO Capital may purchase loans originated or syndicated by any affiliate of VERO Capital or otherwise engage in affiliated transactions on behalf of the Fund. However, to do so, VERO Capital was required to obtain the prior written consent of a committee comprised of VERO Capital's investment professionals (the "Investment Committee"). At all times relevant to this action, Geiger, Barbaresi, and Downey were members of the Investment Committee. No person independent of VERO Capital served on the Investment Committee.

#### Purchase of the Cayden Note

18. After their inception, the Funds invested primarily in residential and then commercial mortgage-backed securities ("RMBS" and "CMBS"). They undertook other investments as well. Specifically, in November 2010, the Investment Committee, on which Geiger, Downey, and Barbaresi sat, approved a transaction in which the Distressed Fund was to purchase the \$3 million Cayden Note from VERO Asset.<sup>4</sup> Under the terms of the Cayden Note, VERO Asset loaned \$3 million to another VERO Capital affiliate, Cayden. The Cayden Note paid 15% interest per annum due in monthly installments, with the entire principal due on December 1, 2013. The interest rate increased to 19% per annum in the event of a default. The Cayden Note also provided that its holder could accelerate the payment of the Note's principal in the event of a default.

19. This affiliated investment was documented by a written authorization by the Investment Committee; however, the investment was not disclosed prior to its completion to TMF Management or to any Distressed Fund investor; nor was consent for the investment obtained from any party outside VERO Capital.

20. The consent authorizing the purchase of the Cayden Note made clear that the purpose for the loan was for Cayden to make certain trades involving Government

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<sup>4</sup> In fact, the Master Fund purchased the Cayden Note according to the 2010 audited financial statements. The PPM disclosed that the Distressed Fund and the Master Fund would be treated interchangeably: "Unless specified otherwise, references herein to the Fund's investments and investment program include references to the Master Fund's investments and investment program, to the extent that the Fund invests through the Master Fund." Geiger, Downey and Barbaresi made little effort to distinguish among them.

National Mortgage Association (“GNMA”) mortgage-backed securities. Cayden’s business plan was to enter into agreements to fund Federal Housing Administration backed fixed-rate construction loan commitments. Draws funded under the loan commitments were guaranteed as to the principal by GNMA, and therefore once the loans were made, they were securitized and Cayden sold the GNMA securities into the aftermarket (the “GNMA trading strategy”). The GNMA trading strategy generated profits for Cayden through 2011 and 2012.

21. VERO Capital disclosed the Master Fund’s purchase of the Cayden Note and Cayden’s GNMA trading strategy in the notes to the Master Fund’s year-end 2010 audited financial statements, which were sent to the Distressed Fund’s investors in April 2011. Cayden made interest payments on the Cayden Note to the Master Fund until February 2013 at which point Cayden defaulted. Although Cayden’s failure to pay interest when due permitted the Master Fund to accelerate the maturity of the Cayden Note, VERO Capital made no effort to collect on the Cayden Note on the Funds’ behalf, as described below.

#### Purchase of the Envo and Tallas Notes

22. In December 2011, the Investment Committee approved the Distressed Fund’s purchase of two additional promissory notes from VERO Asset.<sup>5</sup> Under the terms of the notes, VERO Asset loaned \$2 million each to two unaffiliated issuers, Envo Properties, LLC (“Envo”) and Tallas Properties, LLC (“Tallas”). The loans’ purpose was for Envo and Tallas to make real-estate related investments. The notes (hereinafter the “Envo and Tallas Notes”) paid 12% interest per annum. The Envo and Tallas Notes were guaranteed by an individual and were due to mature January 31, 2013.

23. On December 12, 2011, approximately one week after VERO Asset originated the Envo and Tallas Notes and the Master Fund purchased them, the Commission charged the guarantor and others with operating a Ponzi scheme. *See SEC v. Management Solutions, Inc.*, No. 2:11-cv-01165-BSJ (D. Utah). Simultaneously with the filing of its lawsuit, the Commission obtained a court order freezing the guarantor’s assets and the assets of entities under his control. Like the purchase of the Cayden Note, the Investment Committee approved the purchase of the Envo and Tallas Notes, but the investments were not disclosed prior to their being completed to TMF Management or to any Distressed Fund investor; nor was consent for the investments obtained from any party outside VERO Capital.

24. In early 2012, Barbaresi and Downey took steps to recoup the principal on the Envo and Tallas Notes. As a result of those efforts, in July 2012, VERO Capital recouped approximately \$2.1 million of the principal on the Envo and Tallas Notes. Of this amount, VERO Capital returned \$1.5 million to the Master Fund in September 2012. As

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<sup>5</sup> As was true with the purchase of the Cayden Note, the 2011 audited financial statements indicate that it was the Master Fund, not the Distressed Fund, that purchased the Envo and Tallas Notes.

described further below, VERO Capital diverted the remaining approximately \$600,000 for the VERO affiliate, which drew down on it over time.

25. VERO Capital disclosed the purchase of the Envo and Tallas Notes in the notes to the Funds' audited financial statements for year-end 2011. In addition, in April 2012, VERO Capital sent a letter to the Distressed Fund's investors, enclosing the audited 2011 financial statements for the Funds, that described the situation with the Envo and Tallas Notes. In the letter, VERO Capital stated that it was placing the Envo and Tallas loans on "non-accrual status" and "after much deliberation" was adjusting the fair value of the notes to approximately \$1.8 million for each note to "reflect a liquidity discount."

Respondents Communicate that the Funds Are Winding Down and  
Investors Will Be Redeemed

26. By the fall of 2011, VERO Capital began returning principal to the Distressed Fund's investors. In a June 2012 email, a representative of one of the investors sought information from Geiger about the timing of the wind down and return of investment: "My understanding was the [sic] VERO should have been redeemed in full by now. As it's not, do you have a liquidity schedule for the remaining part?" Geiger responded that VERO Capital had been returning principal "since last Fall" and that VERO Capital was "seeking to make three more distributions before the end of the year, returning the remainder by year end, with a potential tail in January" 2013. After the same investor representative asked for an update at the beginning of September 2012, Downey drafted an email response ultimately sent by Barbaresi stating that VERO Capital remained committed to making another distribution in October 2012. Barbaresi added: "As we continue to sell assets and raise cash, we will be able to obtain greater clarity around the liquidity in the market. We should know by early December if the third distribution will be in December or later as we continue to gain clarity and finish the wind up of the fund."

27. In 2013, the Distressed Fund's two major investors continued to ask about the status of the Fund's wind-down and the return of their principal. For example, in April 2013, a representative of one of these investors asked for another update on the Distressed Fund's wind-down, noting that "[b]ack in Jun/12 the fund was estimated to be fully distributed before end of 2012, with a potential tail into Jan/13." Barbaresi responded later in the month: "We have been actively liquidating the fund's assets and the remaining assets are very illiquid. . . . We hope to have the remaining assets sold by the second half of the year and will keep you updated on ongoing asset sales and distributions." Subsequently, in May, Barbaresi told another investor representative that "[w]e really can't accurately predict when the final liquidation of the fund will occur, as we discussed, we are looking at options to put the last of the illiquid assets into a structure that will not incur administrative fees."

28. In June 2013, Downey, in response to questions by TMF Management about when it could expect the Funds' 2012 audit reports, notified TMF Management that VERO Capital had begun to wind down the Fund, and that an audit would be conducted together with the wind-down audit. Prior to that time, none of the Respondents notified TMF Management of VERO Capital's intentions to liquidate the Funds, and the only notice

TMF Management received of the Funds' return of principal to investors was a line item in the 2011 audited financial statements that TMF Management received some time in or after April 2012.

The Undisclosed Loans from the Funds to Finance the VERO Affiliate

29. Beginning in at least 2008, while it was serving as investment manager to the Funds, VERO Capital was also developing the VERO affiliate as a risk management business or financial services technology company. The VERO affiliate's business plan was to provide large financial institutions with a platform to assist them with modeling the valuation of various pieces of their portfolios in different economic scenarios. VERO Capital anticipated that the demand for this type of service would increase following the financial crisis in 2008 and the passage of the Dodd-Frank Act, with its requirements that large financial institutions perform "stress tests" on their portfolios.

30. During all times relevant to this action, the VERO affiliate was a wholly-owned subsidiary of VERO Capital. Because they were co-owners of VERO Capital, Geiger, Barbaresi, and Downey were also co-owners of the VERO affiliate. In approximately 2010, Downey began treating the VERO affiliate as a separate entity for accounting purposes, booking revenues and expenses of the VERO affiliate separately from VERO Capital. Beginning in 2010, most VERO Capital employees became employees of the VERO affiliate.

31. Beginning in at least February 2012 and continuing through October 2013, when Commission examination staff commenced an examination of VERO Capital, Geiger, Barbaresi, and Downey, through VERO Capital, improperly diverted approximately \$2.8 million in assets of the Funds for purposes of financing the VERO affiliate's operations. While informing the Distressed Fund's investors that the Funds were being wound down, Respondents at the same time transferred the money from the Funds through purported bridge loans to the VERO affiliate. These loans were never documented, nor were any of them disclosed to the Funds or their investors until after the Division of Enforcement ("Division") had commenced its investigation. In making the bridge loans to the VERO affiliate, Geiger, Barbaresi, and Downey did not follow the procedures for affiliated transactions set forth in the PPM. Nor were any of the bridge loans to the VERO affiliate reduced to writing, although they were recorded in the Master Fund's general ledger.

32. VERO Capital accomplished the transfers from the Funds to the VERO affiliate in multiple transactions. First, as the money invested through the Cayden Note in the GNMA trades was returned to Cayden as those trades were closed out throughout 2012, Geiger, Downey, and Barbaresi used at least \$1.4 million to benefit the VERO affiliate, rather than returning it to the Funds. Downey arranged the transfer of the \$1.4 million over time from accounts associated with Cayden to accounts associated with VERO Capital, VERO Asset, or the VERO affiliate, ultimately for the VERO affiliate's benefit. None of the Respondents prepared any documentation concerning the transfers to indicate whether they were loans or investments by Cayden in the VERO affiliate.

33. Second, in July 2012, VERO Capital secured the return of \$2.1 million of the Envo and Tallas Notes' principal. While VERO Capital transferred \$1.5 million of that amount back to the Funds, Geiger, Barbaresi, and Downey used the remaining \$600,000 for the benefit of the VERO affiliate from December 2012 through February 2013. As VERO Capital and the VERO affiliate's CFO, Downey was primarily responsible for disbursing money on their behalf, and Geiger and Barbaresi were aware, or should have been aware, that Downey was using returned Envo and Tallas Note principal to benefit the VERO affiliate.

34. Finally, in August and September 2013, as the VERO affiliate's bank account was nearly depleted, and after VERO Capital had notified TMF Management that the Funds were being liquidated, Downey orchestrated two transfers, of \$500,000 and \$300,000, respectively, from the Master Fund's custodial bank account for the benefit of the VERO affiliate. Downey directed the August and September 2013 transfers from the Master Fund's account at U.S. Bank to VERO Realty, another VERO Capital affiliate.

35. Because U.S. Bank also served as the Funds' administrator and therefore maintained their books and records, Downey had to provide a reason to U.S. Bank for the two disbursements so that U.S. Bank could document what the money was being used for.

36. In an August 1, 2013 email to U.S. Bank, Downey, copying Barbaresi, advised the bank that VERO Capital (through its affiliate, VERO Realty) would invest the \$500,000 that he requested in a property related to the Master Fund's Tallas Note in order to recoup additional principal on the Tallas Note. Downey and Barbaresi were aware, or should have been aware, that the \$500,000 would not be used to invest in a property related to the Tallas Note, but would instead be transferred to pay VERO Capital's and the VERO affiliate's expenses.

37. The same day, U.S. Bank wired \$500,000 to the VERO Realty account. Immediately thereafter, also on August 1, Downey transferred \$80,000 of the \$500,000 from the VERO Realty account to a VERO Capital account and used the money to pay for the VERO affiliate's expenses. On August 2, Downey made two transfers of \$50,000 and \$20,000 from the VERO Realty account to the VERO Capital account, and then subsequently transferred that money to a VERO affiliate account.

38. By September 12, 2013, Downey had transferred all of the \$500,000 from the VERO Realty account for the benefit of the VERO affiliate. Geiger was aware, or should have been aware, that Downey and Barbaresi obtained the \$500,000 from the Master Fund's account and used the money for the VERO affiliate.

39. Again, on September 26, 2013, Downey emailed U.S. Bank, this time copying Barbaresi and Geiger, requesting another transfer to VERO Realty for expenses related to the Tallas properties, again ostensibly for the purposes of recouping additional principal related to the Tallas Note. As part of his September 26, 2013 email, Downey forwarded the previous request for \$500,000 that he made on August 1. Downey, Barbaresi, and Geiger were aware, or should have been aware, that the September 26, 2013

transfer from the Master Fund account would not be used for expenses related to the Tallas properties.

40. U.S. Bank wired \$300,000 to the VERO Realty account on September 26, and Downey began drawing down the account the next day. By October 23, 2013, Downey had used the entirety of the \$300,000 for the benefit of the VERO affiliate.

41. The \$500,000 and \$300,000 transferred from the Master Fund account on August 1, 2013 and September 26, 2013, respectively, were not approved or documented by the Fund's Investment Committee. Neither Downey, Barbaresi nor Geiger ever advised TMF Management, U.S. Bank, or Distressed Fund investors that the Master Fund's money had been used for the benefit of the VERO affiliate until after the commencement of the Division's investigation.

#### Respondents' Nondisclosure of the Transfers to the VERO Affiliate

42. The Respondents took no action to disclose the transfers from the Funds to the VERO affiliate. The Funds' bridge loans to the VERO affiliate were not timely disclosed to the Distressed Fund's investors or TMF Management. During the period when the Funds' assets were being used to finance the VERO affiliate, Downey, Geiger and Barbaresi each prepared and/or reviewed periodic (monthly, then quarterly) newsletters to the Distressed Fund's investors in which the nature and amount of the Fund's investments were purportedly described to them. None of those newsletters disclosed the existence of the transfers to the VERO affiliate. None of the loans to the VERO affiliate was properly documented in any loan agreements. Downey only directed that they be recorded as entries in VERO Capital's general ledger. At no time did anyone prepare any promissory note or other document evidencing the VERO affiliate's debt to the Funds as a result of the approximately \$2.8 million in ostensible loans that the Funds provided.

43. Cayden first defaulted on interest payments due to the Funds under the Cayden Note in February 2013. Cayden defaulted on the interest payments even though Cayden's original investment strategy, the GNMA trading strategy, had been profitable. When Cayden stopped paying interest, under the terms of the Cayden Note, the Funds could have called the loan and accelerated the due date for the return of the principal (which was December 1, 2013). No one associated with VERO Capital took any action to call the loan on the Funds' behalf.

44. In addition, Downey, who was responsible for valuation of certain of the Funds' assets, did not mark down the value of the Cayden Note on either Fund's balance sheet after Cayden defaulted on its interest payments on the Note. This stood in sharp contrast to his decision to mark down the Envo and Tallas Notes in April 2012. Nor did Downey or anyone else at VERO Capital inform U.S. Bank, the Funds' administrator, that Cayden had defaulted on the Cayden Note until December 2013. As a result of Respondents' failure to mark down the value of the Cayden Note, the Funds' assets under management were overstated and their losses understated in quarterly investor statements issued in March 2013 and later.

Geiger, Barbaresi, and Downey Benefit from the Transfers to the VERO Affiliate

45. Geiger, Barbaresi, and Downey benefited from the transfers from the Funds. For example, from August to October 2013, when the \$800,000 from the Master Fund account was the primary source of money for VERO Capital, Downey paid himself more than \$125,000 in purported salary and expenses, purportedly earned as a result of work he had performed for the VERO affiliate. Downey also directed \$48,000 to Geiger to pay bills on his behalf, including business expenses due from the VERO affiliate, and wired another \$40,000 to Barbaresi, all also representing purported compensation or reimbursement due from the VERO affiliate.

46. In addition, at the time the VERO affiliate was a wholly-owned subsidiary of VERO Capital, which was co-owned by Geiger, Barbaresi, and Downey, among others. The utilization of cash from the Funds to finance the VERO affiliate's ongoing development and operations in 2012 and 2013 thus inured to the benefit of Geiger, Barbaresi, and Downey, as they stood to gain from any profits that the VERO affiliate ultimately generated.

VERO Capital Failed to Comply with the Custody Rule in 2012 and 2013

47. As investment adviser to the Funds, VERO Capital held custody of Fund assets because it was authorized or permitted to withdraw money from the Master Fund's custodial account. Because VERO Capital had custody of client assets, Advisers Act Rule 206(4)-2 required VERO Capital to, among other things, provide notice to investors in the Funds upon opening the account with U.S. Bank on their behalf, establish a reasonable belief upon due inquiry that U.S. Bank was delivering account statements to investors in the Fund at least quarterly, and undergo an annual surprise examination by an independent public accountant. Alternatively, VERO Capital could have had the Funds audited annually by an independent public accountant that was registered with and subject to regular inspection by the Public Company Accounting Oversight Board and distribute audited financial statements prepared in accordance with Generally Accepted Accounting Principles to the investors in the Funds within 120 days of the Funds fiscal year end. VERO Capital did neither in 2012 and 2013.

E. VIOLATIONS

48. As a result of the conduct described above, VERO Capital, Geiger, Barbaresi, and Downey willfully<sup>6</sup> violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which prohibit conduct by an investment adviser that operates as a fraud.

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<sup>6</sup> A willful violation of the securities laws means merely “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)).

49. As a result of the conduct described above, VERO Capital willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, “acting as principal for his own account, knowingly to sell any security or to purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.”

50. As a result of the conduct described above, VERO Capital willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which requires that an investment adviser maintain each client’s funds in bank accounts containing only those client funds, notify its clients about the place and manner in which their funds are maintained, and have client funds and securities verified by an independent public accountant at least once a year without prior notice to the investment adviser.

51. As a result of the conduct described above, Geiger, Barbaresi, and Downey willfully aided and abetted and caused VERO Capital’s violations of Sections 206(2), 206(3), and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-8 promulgated thereunder.

#### F. UNDERTAKINGS

52. Respondent VERO Capital has undertaken to cease investment advisory operations and deregister as an investment adviser within 180 days of entry of this Order. The 180 day limit shall not apply to VERO Capital’s role as a named plaintiff in the lawsuits captioned *VERO Distressed ABS Opportunity Fund, B.V. et al. v. BC Warner Investments, L.C. et al.*, Civ. No. 149915059 (3rd Judicial Dist., Salt Lake Cty, Utah) and *VERO Distressed ABS Opportunity Fund, B.V. et al. v. Jacobson et al.*, (3rd Judicial Dist., Salt Lake Cty, Utah (expected)) (collectively, the “Fund Lawsuits”).

53. Respondent VERO Capital has undertaken to certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 VERO Capital agrees to provide such evidence. The certification and supporting material shall be submitted to Thomas P. Smith, Jr., Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty days from the date of the completion of the undertakings.

54. In determining whether to accept VERO Capital’s Offer, 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 the Offers of Respondents VERO Capital, Geiger, Barbaresi, and Downey.

Accordingly, pursuant to Section 4C of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e)(1) of the Rules of Practice, it is hereby ORDERED that:

A. Respondents VERO Capital, Geiger, Barbaresi and Downey 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 Rules 206(4)-2 and 206(4)-8 thereunder.

B. Respondents Geiger, Barbaresi, and Downey be, and hereby are:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; provided however, that for a period of up to 180 days from the entry of this Order, Respondents Geiger, Barbaresi, and Downey may, solely for the purposes of completing the wind down of the Funds, making final payments and distributions to investors in those Funds, and preserving value for those investors in the interim, (1) participate in advisory activities and (2) continue to be associated with VERO Capital while VERO Capital acts as an investment adviser. The 180 day limit shall not apply to Respondents' supervision of the Fund Lawsuits.; and

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;

with the right to apply for reentry after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by any Respondent 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 the Respondent, 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.

- D. Respondent VERO Capital is censured.
- E. Respondent Downey is denied the privilege of appearing or practicing before the Commission as an accountant.
- F. After three years from the date of this Order, Respondent Downey may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:
1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his/her practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
  2. an independent accountant. Such an application must satisfy the Commission that:
    - a. Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
    - b. Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;
    - c. Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
    - d. Respondent acknowledges his/her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration,

inspections, concurring partner reviews and quality control standards.

G. The Commission will consider an application by Respondent Downey to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

H. Respondent Barbaresi is denied the privilege of appearing or practicing before the Commission as an attorney for three years from the date of the Order.

I. After three years from the date of the Order, Respondent Barbaresi may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

1. In support of such an application, Respondent must provide a certificate of good standing from each state bar where Respondent is a member.
2. In support of such an application, Respondent must also submit an affidavit truthfully stating, under penalty of perjury:
  - a. that Respondent has complied with the Order;
  - b. that Respondent:
    - i. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and
    - ii. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;
  - c. that Respondent, since the entry of the Order, has not been convicted of a felony or misdemeanor involving

moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and

- d. that Respondent, since the entry of the Order:
  - i. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;
  - ii. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
  - iii. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
  - iv. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

J. If Respondent Barbaresi provides the documentation required in Paragraph I, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

K. If Respondent Barbaresi is not able to truthfully attest to the statements required in Subparagraphs I(2)(b)(ii) or I(2)(d), Respondent shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

L. Respondents VERO Capital, Geiger, Barbaresi, and Downey, jointly and severally, shall pay disgorgement of \$2,879,623, and prejudgment interest of \$189,083.35, for a total of \$3,068,706.35, to the Securities and Exchange Commission. Payment shall be made in the following installments: \$1,534,353.18 within 180 days of the entry of the Order; and \$1,534,353.17 within 360 days of the entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents 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. Respondents 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 VERO Capital, Geiger, Barbaresi, or Downey 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 Amelia A. Cottrell, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

M. Respondents VERO Capital, Geiger, Barbaresi, and Downey shall each pay a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: each shall make a payment of \$150,000 within 180 days of the entry of the Order; and each shall make a payment of \$150,000 within 360 days of the entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. 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 VERO Capital, Geiger, Barbaresi, or Downey 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 Amelia A. Cottrell, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

#### 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 Respondents Geiger, Barbaresi, and Downey, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Geiger, Barbaresi, and Downey 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 Respondents Geiger, Barbaresi, and Downey 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