

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 31678 / June 17, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16599

In the Matter of

**COMMONWEALTH CAPITAL
MANAGEMENT, LLC,
COMMONWEALTH
SHAREHOLDER SERVICES, INC.,
JOHN PASCO, III,
J. GORDON MCKINLEY, III,
ROBERT R. BURKE, and
FRANKLIN A. TRICE, III,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 9(b) AND 9(f)
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 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Commonwealth Capital Management, LLC (“CCM”), Commonwealth Shareholder Services, Inc. (“CSS”), John Pasco, III, J. Gordon McKinley, III, Robert R. Burke, and Franklin A. Trice, III (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “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, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections

9(b) and 9(f) 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

This matter involves the failure of a mutual fund adviser and the funds’ board members to satisfy specific duties imposed upon them by Section 15(c) of the Investment Company Act concerning the evaluation of certain fund advisory contracts. As part of the advisory contract approval process, Section 15(c) of the Investment Company Act imposes a duty on the board members of a registered investment company to request and evaluate, and a duty on the adviser to furnish, such information as may reasonably be necessary for the board members to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as an investment adviser to such company.

In connection with one meeting of the Board of Trustees of World Funds Trust (“WFT”) and two meetings of the Board of Directors of World Funds, Inc. (“WFI”), then-trustees McKinley, Burke and Trice (collectively, the “Trustees”) in the case of WFT, and the then-independent directors (Directors 1, 2, and 3, collectively, “Independent Directors”) in the case of WFI, having consulted independent counsel (“Independent Counsel”), requested reasonably necessary information from fund adviser CCM and its principal, Pasco, to evaluate before approving advisory contracts. In certain instances, CCM’s and Pasco’s written responses did not provide all of the requested information; in certain other instances (pertaining to WFI), the information provided was inaccurate. Thus, the Trustees did not have, and consequently did not evaluate, all the information they requested as reasonably necessary before approving the advisory contracts. Accordingly, CCM and the Trustees violated Section 15(c) of the Investment Company Act, and Pasco caused CCM’s violations.

In accordance with fund reporting requirements, following a board’s approval or renewal of an advisory contract, the fund’s next report to shareholders must discuss, in reasonable detail, the material factors and conclusions that formed the basis for the board’s approval or renewal of that contract. CSS, which was contractually responsible for preparing the shareholder reports on behalf of the WFI funds, failed to include such information in one fund’s 2010 shareholder report. Consequently, CSS caused WFI to violate Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder.

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

RESPONDENTS

1. **Commonwealth Capital Management, LLC** (“CCM”), a Virginia limited liability company headquartered in Richmond, Virginia, has been registered with the Commission as an investment adviser since 2001. At all relevant times, CCM acted as the investment adviser to various mutual funds within WFT and WFI. CCM is owned and operated by its president, Pasco, and is one of the Service Providers.

2. **Commonwealth Shareholder Services, Inc.** (“CSS”), a Virginia corporation headquartered in Richmond, Virginia, is a mutual fund administrator that provides comprehensive services to mutual funds for fund administration. CSS has acted as the fund administrator to WFT and WFI and their respective series since their inception. CSS is one of the Service Providers owned and operated by Pasco, and it shares many of the same personnel with CCM.

3. **John Pasco, III** (“Pasco”), age 70, is a resident of Richmond, Virginia. Pasco owns the Service Providers, including CCM and CSS. He also served as the chairman, president, and sole interested director of WFI from its inception until the company was reorganized in August 2014 when each series became a series of WFT. Since June 2010, Pasco also has served as an interested trustee of WFT. Pasco holds Series 1, 4, 7, 24, and 63 securities licenses.

4. **J. Gordon McKinley, III** (“McKinley”), age 51, is a resident of Bluemont, Virginia. McKinley joined the WFT board in June 2008. He served on the board until his voluntary resignation in May 2010. McKinley previously held Series 7, 63, and 65 securities licenses.

5. **Robert R. Burke** (“Burke”), age 53, is a resident of Richmond, Virginia. Burke joined the WFT board in June 2008. He served on the board until his voluntary resignation in November 2009. Burke holds a Series 65 securities license.

6. **Franklin A. Trice, III** (“Trice”), age 51, is a resident of Richmond, Virginia. Trice was employed by the Service Providers as a managing director of marketing until his voluntary resignation in October 2009. Trice was the chairman, sole interested trustee, and officer² of WFT from its inception until he voluntarily resigned in May 2010. Trice previously held Series 6, 7, 63, and 65 securities licenses.

² As an officer, Trice served as the president and principal executive officer of WFT.

OTHER RELEVANT ENTITIES AND PERSONS

7. **World Funds Trust** (“WFT”), a Delaware statutory trust headquartered in Richmond, Virginia, has been registered with the Commission as an open-end management investment company since 2008. WFT operates a series trust and was composed of up to six series during the relevant period, including three new series funds considered at the October 2008 board meeting (the three new series funds hereinafter referred to as the “WFT Funds”). Several of the WFT series funds were managed by different advisers and sub-advisers.

8. **World Funds, Inc.** (“WFI”), a Maryland corporation headquartered in Richmond, Virginia, has been registered with the Commission as an open-end management investment company since 1997. WFI operated as a series company and was composed of up to 11 series during the relevant period.

9. **The Service Providers**, including among others CCM and CSS, are an affiliated group of companies based in Richmond, Virginia that are owned and operated by Pasco. The Service Providers provide various turnkey services to mutual funds, including investment advisory, fund accounting, fund administration, transfer agent, and distribution services. They have provided services to WFT and WFI and their respective series since their inception.

10. **Sub-adviser A**, a Florida corporation headquartered in Tampa, Florida, and not affiliated with the Service Providers, was at all relevant times registered with the Commission as an investment adviser, but that registration has since been terminated and Sub-adviser A now is registered with the State of Florida. Sub-adviser A acted as the sub-adviser to the WFT Funds at all relevant times as discussed below.

11. **Sub-adviser B**, a New York corporation headquartered in New York, New York, and not affiliated with the Service Providers, was at all relevant times registered with the Commission as an investment adviser. Sub-adviser B acted as the sub-adviser to one WFI fund (“WFI Fund”) at all relevant times as discussed below.

12. **Director 1** served as an independent director of WFI from its inception until the company was reorganized and each of its series became a series of WFT, which is overseen by a board of trustees that does not include Director 1.

13. **Director 2** served as an independent director of WFI from its inception until the company was reorganized and each of its series became a series of WFT, which is overseen by a board of trustees that does not include Director 2.

14. **Director 3** served as an independent director of WFI from its inception until the company was reorganized and each of its series became a series of WFT, which is overseen by a board of trustees that does not include Director 3.

FACTS

Background

15. Pasco formed the Service Providers as a turnkey investment company platform for advisers that want to manage small to mid-size mutual funds without having to administer the day-to-day operations of a fund, including the management of corporate governance and regulatory compliance.

16. WFT is registered with the Commission as an open-end series investment company. It was formed by Pasco to allow unaffiliated advisers to manage the portfolios of one or more mutual fund series. During the relevant period, WFT was composed of up to six series, several of which were managed by different advisers and sub-advisers.

17. At all relevant times, WFT utilized the services provided by the Service Providers, including, among others, fund administration provided by CSS. CCM served as the investment adviser for several of WFT's series, including the WFT Funds. CCM did not make the day-to-day investment decisions for the funds; instead, it contracted out those services to Sub-adviser A.

18. During the relevant period, WFT's board consisted of the three Trustees. Trice, the sole interested trustee and chairman of WFT, received no compensation for his service as a Trustee or officer, but he was compensated by the Service Providers for his services to them. McKinley and Burke (together, the "Independent Trustees") were not "interested persons" as that term is defined under Section 2(a)(19) of the Investment Company Act. McKinley and Burke had not previously served as a director or trustee of a registered investment company, and they joined the board after confirming that Independent Counsel would advise them. For the benefit of shareholders, McKinley and Burke voluntarily waived their compensation as trustees for the entire period they served on the board.

19. WFI registered with the Commission as an open-end management investment company in 1997. It operated as a series company and was composed of up to 11 series during the relevant period. WFI was reorganized in August 2014 when each of its series became a series of WFT.

20. At all relevant times, WFI utilized some of the services provided by the Service Providers, including, among others, fund administration provided by CSS. CCM served as the investment adviser for the WFI Fund. CCM did not make the day-to-day investment decisions for that fund; instead, it contracted out those services to Sub-adviser B.

21. During the relevant period, WFI's board consisted of four individuals: Pasco, Director 1, Director 2, and Director 3. Pasco was the sole interested director and chairman of WFI; Director 1, Director 2, and Director 3 (together, the "Independent Directors") were not "interested persons" as defined by Section 2(a)(19) of the Investment Company Act.

Requirements of Section 15(c) of the Investment Company Act and Related Fund Reports and Disclosures

22. Section 15(c) of the Investment Company Act makes it unlawful for a registered investment company to enter into or renew any advisory contract unless the terms of the contract are approved by a majority of the fund's independent directors. As part of the approval process, Section 15(c) imposes a duty on the directors to request and evaluate, and a duty on the adviser to furnish, such information as may reasonably be necessary for the directors to evaluate the terms of the adviser's contract.

23. Section 15(c) does not define what may be "reasonably necessary" to evaluate a contract's terms, but that analysis may be informed by certain factors – known as the *Gartenberg* Factors. See Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies, Investment Company Act Release No. 26486 at n.31 (June 23, 2004) (adopting release). These factors include, where applicable: (i) the adviser's cost in providing the services; (ii) the nature and quality of the adviser's services; (iii) the extent to which the adviser realizes economies of scale as the fund grows larger; (iv) the profitability of the fund to the adviser; (v) fee structures for comparable funds; (vi) fall-out benefits accruing to the adviser or its affiliates; and (vii) the independence, expertise, care, and conscientiousness of the board. *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923, 930 (2d Cir. 1982); see also *Jones v. Harris Assocs.*, 559 U.S. 335 (2010) (adopting the *Gartenberg* Factors). As discussed below, the WFT and WFI boards used the "*Gartenberg* Factors" to evaluate advisory contracts.

24. The Commission specified factors similar to the *Gartenberg* Factors in fund reporting requirements designed to better inform shareholders about a board's evaluation process under Section 15(c). In particular, when a fund board approves or renews any advisory contract, the fund's next shareholder report must discuss, in reasonable detail, the material factors and conclusions with respect thereto that formed the basis for the directors' approval or renewal of that contract. See Form N-1A, Item 27(d)(7) [formerly denominated as Item 21 and, more recently, 27(d)(6)]. Generally, the shareholder report must discuss factors including, but not limited to: (1) the nature, extent, and quality of the services to be provided by the investment adviser; (2) with respect to an operating fund, the investment performance of the fund and the investment adviser; (3) the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the fund; (4) the extent to which economies of scale would be realized as the fund grows; and (5) whether fee levels reflect these economies of scale for the benefit of fund investors. See Form N-1A, Item 27(d)(7)(i). Furthermore, Form N-1A requires that the shareholder report indicate whether the board relied upon fee comparisons with other funds or types of clients in approving the contract and, if so, describe the comparisons that were relied upon and how they assisted the board in concluding that the contract should be approved. *Id.*

25. The Commission designed such disclosures to "encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract," which "in turn, may encourage fund boards to consider investment advisory contracts more

carefully.” Investment Company Act Release No. 26486. As the Commission observed, “[i]t would be difficult for a board to reach a final conclusion as to whether to approve an advisory contract without reaching conclusions as to each material factor.” *Id.* The Commission also noted, however, that any of the enumerated factors might not be relevant to the approval of a contract, in which case “the discussion must note this and explain the reasons why that factor is not relevant.” *Id.*

The October 2008 Approval of the WFT Funds’ Advisory Contracts

World Funds Trust’s 15(c) Process

26. On October 1, 2008, at the second meeting of the WFT Board of Trustees, the Trustees evaluated and approved advisory contracts for the WFT Funds. Each fund was advised by CCM and sub-advised by Sub-adviser A.

27. In the interest of limiting the operating expenses of the WFT Funds, the Trustees also approved an expense limitation agreement (“ELA”) pursuant to which CCM agreed to waive fees above a certain threshold and to assume other operating expenses to protect shareholders in the event that assets decline. During the entire relevant period, the WFT Funds did not pay any advisory fees due to the fee waiver. In addition, CCM reimbursed the vast majority of operating expenses incurred by the WFT Funds.³

28. Prior to the October 1 meeting, the Trustees – with the assistance of Independent Counsel⁴ and CSS – requested certain materials and information from CCM and Sub-adviser A as part of the 15(c) process. Specifically, the Trustees, acting through CSS, requested a copy of CCM’s and Sub-adviser A’s most current Form ADV Parts I and II, compliance manuals, code of ethics, and current financial statements. The Trustees also requested that CCM and Sub-adviser A complete a questionnaire prepared by Independent Counsel that contained numerous questions about each adviser’s operations, compensation, and compliance procedures. The questionnaire also requested information concerning the *Gartenberg* Factors, including a request for comparative fee information. The questionnaire advised Pasco that the board’s approval of the advisory contract would be based, in part, on CCM’s responses to the questionnaire and the documents provided.

29. CSS compiled the various documents, questionnaire responses, and other relevant materials into a “Board Book.” Pasco reviewed and certified the questionnaire responses on behalf of CCM. The Board Book contained a detailed memorandum to the Independent Trustees prepared by their Independent Counsel that described their Section 15(c) duties concerning the approval of the WFT Funds’ advisory contracts. The Trustees

³ Two of the WFT Funds closed in July 2009.

⁴ Legal counsel “can assist directors . . . [in] evaluating legal issues with an independent critical eye. Often, independent counsel can draw on their experience and knowledge to identify best practices of other funds that might be appropriate for directors to adopt for their fund.” *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24082 (Oct. 14, 1999) (proposing release).

referred to this memorandum as the “*Gartenberg* Memo.” The *Gartenberg* Memo generally discussed the Independent Trustees’ duties to request and evaluate information from the advisers and sub-advisers and advised them that, among other things, they should consider a comparison of the management fees paid by comparable mutual funds in determining whether an adviser’s fee is reasonable. The *Gartenberg* Memo further counseled the Independent Trustees in arriving at their business judgment to consider “a comprehensive description of the investment advisory and other services provided to the funds by the adviser or its affiliates;” the adviser’s costs and profitability; economies of scale; and the nature and amount of indirect benefits received by CCM and its affiliates. The *Gartenberg* Memo referenced certain court decisions that highlight directors’ discretion to make good faith judgments as to the information required and the weight to be given to information considered.

30. The Board Book was sent to, and reviewed by, the Trustees and Independent Counsel in advance of the October 1, 2008 board meeting.

31. The Trustees and Pasco attended the board meeting in person while Independent Counsel participated telephonically. During the October 1 meeting, the Trustees consulted with Independent Counsel regarding the information provided, discussed their comments and questions concerning the information provided in the Board Book, and relied upon the guidance received from Independent Counsel. Independent Counsel prepared the minutes from counsel’s contemporaneous notes to memorialize what transpired at the meeting.

CCM Did Not Furnish, and WFT’s Board Did Not Have, All the Information the Board Requested as Reasonably Necessary to Evaluate the Advisory Contracts

Comparable Fund Fees

32. As part of the 15(c) process, the Trustees requested that CCM and Pasco submit comparative fee information along with the completed 15(c) questionnaire. There is no documentary evidence that CCM furnished information regarding the fees paid by comparable funds.

33. Notwithstanding the fact that CCM failed to provide the requested comparative fee information, the Trustees approved the advisory contracts because they considered the proposed advisory fees to be within an appropriate range.

Nature and Quality of Services Provided

34. The Trustees requested various information to evaluate the nature and quality of services provided by CCM. The materials CCM provided to the Trustees in response to the 15(c) questionnaire did not permit a sufficient evaluation of the nature and quality of such services. CCM provided only limited disclosures that left unclear what services it intended to provide versus those that would be provided by others. The advisory and sub-advisory contracts described the adviser's and sub-adviser's proposed duties using nearly identical language (except that the sub-adviser's duties were subject to CCM's "supervision"). CCM's written responses to the 15(c) questionnaire explained that the sub-adviser was responsible for portfolio management and otherwise referred the Trustees to Sub-adviser A's response to the questionnaire. Sub-adviser A's response, however, did not elaborate on CCM's services. After reviewing the materials, the Trustees did not ask for, and CCM did not provide, additional materials to clarify what services CCM would perform in exchange for its proposed fee.

35. The 15(c) questionnaire also requested CCM to discuss what services of a material nature it would provide to WFT. CCM responded that it would conduct oversight of Sub-adviser A through quarterly and annual due diligence reviews. CCM also stated that CSS would track the funds' portfolios to ensure compliance with stated investment limitations in the prospectus and statement of additional information. According to Pasco's response on behalf of CCM, CSS would then report its findings to the Trustees on at least a quarterly basis. CCM, however, did not articulate what portfolio management compliance services it would perform itself, and the Trustees did not request additional materials to clarify the matter. Although during the relevant period the WFT Funds did not pay any advisory fees and CCM reimbursed the majority of the operating expenses incurred pursuant to the ELA, the Trustees were obligated to evaluate CCM's services as compared to the fees provided for in the advisory contracts.

36. The Trustees received incomplete responses to the 15(c) questionnaire seeking information about CCM's services, and did not request or receive additional materials. Thus, the Trustees approved the WFT Funds' advisory contracts without having all the information they requested as reasonably necessary to evaluate the advisory contracts.

The August 2009 Approval of the WFI Fund Advisory Contract

World Funds Inc.'s 15(c) Process

37. On August 27, 2009, the WFI Board of Directors held its quarterly meeting to evaluate and approve the advisory and sub-advisory contract renewals for, among other funds, the WFI Fund advised by CCM and sub-advised by Sub-adviser B.

38. Just as it did for WFT, CSS compiled various materials into a Board Book, including a *Gartenberg* Memo, CCM's and Sub-adviser B's 15(c) questionnaires, codes of ethics, Form ADV Parts I and II, financials, and advisory fee and performance tables.

39. The 15(c) questionnaire prepared by Independent Counsel contained numerous questions about each adviser's operations, compensation, and compliance

procedures; the questionnaire also requested information concerning the *Gartenberg* Factors. The cover letter to the questionnaire stated “we are writing to request that the adviser provide the Board with the information reasonably necessary for the Board to fulfill its obligation under section 15(c). The Board believes that such information includes your responses to the items requested below.”

40. The *Gartenberg* Memo generally discussed the Independent Directors’ duties to request and evaluate information from CCM and Sub-adviser B and advised them that, among other things, they should consider performance data and a comparison of the management fees paid by mutual funds in relevant peer groups in determining whether an adviser’s fee is reasonable. The *Gartenberg* Memo further counseled the Independent Directors to consider “a comprehensive description of the investment advisory and other services provided to the funds by the adviser or its affiliates;” the adviser’s costs and profitability; economies of scale; and the nature and amount of indirect benefits received by CCM and its affiliates. The Independent Directors reviewed the *Gartenberg* Memo and discussed it with Independent Counsel.

41. The Board Book was sent to the Independent Directors and Independent Counsel for their review prior to the board meeting. The Independent Directors met with Independent Counsel in executive session the evening before the board meeting. The Independent Directors, Pasco, and Independent Counsel attended the board meeting in person. Independent Counsel prepared the minutes from counsel’s contemporaneous notes to memorialize what transpired at the meeting.

CCM Did Not Furnish, and WFI’s Board Did Not Have, All the Information the Board Requested as Reasonably Necessary to Evaluate the Advisory Contract

Comparable Fund Analysis

42. CCM used a standard industry database to provide fee information for share classes that were comparable in size to WFI Fund’s class A shares and that had an investment strategy that was comparable to the WFI Fund. To avoid claims of “cherry-picking” exemplar funds, CCM did not edit the tables to delete share classes of funds that were not directly comparable to the WFI Fund, and therefore the chart contained numerous inapt comparisons. The following table (also reproduced in more legible format at Appendix A), was used for comparing the WFI Fund’s advisory fee and total expense ratio against other supposedly comparable funds.

Expense Comparison of the Eastern European Equity Fund to the Lipper Emerging Markets Category of Funds

\$25M-\$45M in Total Net Assets

| Fund Name | L Cls | Latest Total Net Assets (Mil. \$) | | Latest Total Expense Ratio | Net Prospectus Expense Ratio | Latest Advisory Fees Amount (000 \$) | | Latest Mgt Fee Amount (000 \$) | | Latest Advisory Fees % Ratio | | Latest Non 12b-1Exp % Ratio | | Latest Sub Adv Fees % Ratio | |
|-----------------------------|-----------|-----------------------------------|-------------|----------------------------|------------------------------|--------------------------------------|-------------|--------------------------------|-------------|------------------------------|-------------|-----------------------------|--|-----------------------------|--|
| | | Total | Max 12b-1 | | | Latest Data | Latest Data | Latest Data | Latest Data | Latest Data | Latest Data | | | | |
| American Funds NWld;R-1 | EM | 25.2 | 1 | 1.74 | 1.79 | 81 | 81 | 0.526 | 0.188 | 0 | | | | | |
| SPDR S&P Em Mkts Sm Cp | EM | 25.4 | 0.25 | | 0.65 | | | | | | | | | | |
| Principal Intl EM;R-5 | EM | 25.6 | | 1.52 | 1.52 | 302 | 330 | 1.192 | 0.15 | 0 | | | | | |
| Allianz NACM EM OppyA | EM | 26.1 | 0.25 | 1.77 | 1.78 | 19 | 45 | 0.446 | | 0 | | | | | |
| Virtus:Emg Mkt Oppy;A | EM | 27 | 0.25 | 1.79 | 1.67 | 42 | 46 | 1.032 | | 0 | | | | | |
| GMQ:Emerg Cntry;M | EM | 27.1 | 1 | 1.48 | 1.41 | 248 | 325 | 0.65 | | 0 | | | | | |
| Third Mill Russia;A | EM | 27.1 | 0.25 | 2.75 | 1.34 | 1888 | 2116 | 1.63 | | 0 | | | | | |
| Nich-App Inst:EM Mkt;I | EM | 27.3 | | 1.29 | 1.32 | | | | | | | | | | |
| Causeway:Emer Mkt;Inst | EM | 27.7 | | 1.35 | 1.35 | -62 | -60 | -0.855 | | 0 | | | | | |
| ING:Em Ctry;I | EM | 27.9 | | 1.63 | 1.54 | 401 | 433 | 1.25 | | 0.7 | | | | | |
| Russell Emerging Mkts;C | EM | 28.5 | 0.75 | 2.66 | 2.62 | 616 | 643 | 1.15 | 0.25 | 0 | | | | | |
| Legg Mason P:EM Eqty;A | EM | 28.8 | 0.25 | 1.55 | 1.5 | 290 | 290 | 0.845 | | 0.575 | | | | | |
| Marshall:Emg Mkt Eq;Inst | EM | 29.1 | | | 1.25 | | | | | | | | | | |
| AIM Develpng Mkts;Y | EM | 29.2 | | | 1.35 | | | | | | | | | | |
| Wasatch: Emg Mkt SC | EM | 30.1 | | 2.1 | 2.12 | | | | | | | | | | |
| Aberdeen Deval Mkts;A | EM | 30.3 | 0.25 | 1.7 | 1.86 | 553 | 625 | 1.113 | 0.089 | 0 | | | | | |
| UBS PACE I Emrg;Y | EM | 30.9 | | 1.5 | 1.4 | 257 | 257 | 1.1 | | 0 | | | | | |
| Eastern Eur Equity;A | EM | 31 | 0.25 | 2.56 | 2.72 | 883 | 1024 | 1.25 | | 0.6 | | | | | |
| American Funds NWld;5B | EM | 32 | 1 | 1.82 | 1.82 | 158 | 158 | 0.526 | 0.237 | 0 | | | | | |
| Threadneedle Emg Mkt;B | EM | 33.8 | 1 | 2.62 | 2.62 | 911 | 976 | 1.105 | | 0 | | | | | |
| Pac LF:Emrg Mkts;A | EM | 35.9 | 0 | 1.42 | 1.36 | -12 | 128 | -0.03 | 0.426 | 0.23 | | | | | |
| RS Inv:Emerging Mkts;K | EM | 36 | 0.65 | 1.94 | 1.94 | 266 | 266 | 0.983 | 0.186 | 0 | | | | | |
| Templeton Dev Mkts;R | EM | 36 | 0.5 | 2.11 | 2.12 | 340 | 364 | 1.208 | | 0 | | | | | |
| Van Kampen Emrg;B | EM | 36.7 | 1 | 2.59 | 2.59 | 1016 | 1016 | 1.241 | | 0 | | | | | |
| MFS Emrg Mkts Eq;C | EM | 38.2 | 1 | 2.44 | 2.45 | 638 | 649 | 1.05 | | 0 | | | | | |
| Amer Cent:Em Mkts;Inst | EM | 39.1 | | 1.46 | 1.62 | 1505 | 1505 | 1.59 | | 0 | | | | | |
| Schwab Cap:FEmMkt;Inst | EM | 39.7 | | 0.61 | 0.63 | | | | | | | | | | |
| Seligman GI:Emrg Mkt;A | EM | 41.3 | 0.25 | 2.35 | 2.35 | 741 | 741 | 1.147 | | 0.65 | | | | | |
| Eaton Vance Emrg Mkt;A | EM | 41.4 | 0.5 | 2.37 | 2.27 | 1174 | 1480 | 0.96 | | 0 | | | | | |
| Van Kampen Emrg;C | EM | 41.7 | 1 | 2.59 | 2.59 | 844 | 844 | 1.241 | | 0 | | | | | |
| AIM Develpng Mkts;B | EM | 42 | 1 | 2.34 | 2.35 | 709 | 709 | 0.896 | | 0 | | | | | |
| Goldman:BRIC;I | EM | 42.5 | | 1.5 | 1.5 | 166 | 166 | 1.01 | | 0 | | | | | |
| Amer Cent:NT Em Mkt;Inst | EM | 43.1 | | 1.52 | 1.67 | 128 | 128 | 1.583 | | 0 | | | | | |
| SA Funds:Emrg Mkts Val | EM | 43.2 | | 1.45 | 1.45 | | | | | | | | | | |
| Legg Mason GI:EM;S | EM | 43.3 | | | 1.25 | | | | | | | | | | |
| Laudus Mo EM;Inst | EM | 43.8 | | 1.45 | 1.45 | | | | | | | | | | |
| DWS Em Mkts Eqty;Inst | EM | 44.5 | | 1.38 | 1.38 | | | | | | | | | | |
| Franklin India Gr;Adv | EM | 45 | | 1.4 | 1.4 | | | | | | | | | | |
| AVERAGE/COUNT | | 154906 | 0.611 | 1.713 | 1.7 | 1073394 | 1172140 | 0.949 | 0.209 | | | | | | |
| MEDIAN | | 25.3 | 0.5 | 1.7 | 1.65 | 561 | 643 | 1 | 0.229 | | | | | | |

The data represented is based on the Lipper Emerging Markets Classification of Funds. As of 6.30.09, there were 400 funds in the Lipper Emerging Markets universe.

43. Included in the table were: (i) fund share classes with different distribution fee structures; (ii) assets at a share-class level rather than total-fund level; (iii) different types of funds (including an exchange-traded fund, or index-based “ETF,” and an unmanaged index fund – the WFI Fund is an actively managed fund); and (iv) funds with different fee structures (including funds with a combined advisory/administration fee – the WFI Fund has a separate advisory and administration fee). Furthermore, certain information in the table was missing or incomplete.

44. CCM provided two additional charts that compared the WFI Fund’s expense ratio and advisory fee to those of selected funds from the table described above. These charts provided only limited information for evaluating the WFI Fund’s expense ratio and advisory fee. The first chart compared the total expense ratio of the WFI Fund to four CCM-selected funds with different share classes, two of which had an expense ratio that included a 1.00% 12b-1 fee, while the WFI Fund class A had a 12b-1 fee of .25%. The chart also erroneously depicted one unaffiliated fund’s 12b-1 fee rather than its expense ratio.

45. The second chart compared the WFI Fund's advisory fee to the same four funds, two of which had a combined advisory/administration fee. Because the WFI Fund had a separate administration fee, a true advisory fee comparison required adding the WFI Fund's separate administration fee (0.20%) to its advisory fee (1.25%). While the table reflected that the WFI Fund's advisory fee was the highest advisory fee, including the administration fee with the advisory fee would have made the WFI Fund's advisory fee appear even higher by comparison.

Profitability and Allocation of Costs and Expenses

46. The Independent Directors' 15(c) questionnaire also asked that CCM provide "all reasonably available financial information," including two years of financial statements, to assist the board in assessing the adviser's profitability. In particular, the questionnaire asked CCM to describe the basis and methodology for allocating indirect costs, overhead, and other costs to the fund.

47. Rather than providing two years of financial statements, CCM provided an income statement (and no balance sheet) for only one year and a profitability chart that estimated overhead and other expenses for the same year. Although requested in the Independent Directors' 15(c) questionnaire, CCM also did not provide any written description of its allocation methodology.

Expense Limitation Agreement

48. Since November 2004, the WFI Fund had in place an ELA that capped the fund's total annual operating expenses (including advisory fee) at 2.75% of net assets. Under the terms of the ELA, CCM agreed to waive or limit its advisory fee if such expenses exceeded 2.75%.

49. As part of the 15(c) questionnaire, the Independent Directors requested that CCM provide the dollar amount of fees waived since the last renewal of the advisory contract. CCM and Pasco responded that no fees were waived despite the fact that CCM waived a portion of its advisory fee in connection with the ELA during the relevant period.

Economies of Scale

50. The 15(c) questionnaire asked CCM to address the adequacy and appropriateness of any WFI Fund breakpoints. CCM informed the Independent Directors that the fund had breakpoints and that the breakpoints listed in the advisory contract were appropriate. In fact, however, although all parties believed that earlier breakpoints had been provided for in the current agreements at the time of an earlier reorganization, the proposed breakpoints had been omitted from CCM's contract. The fees payable by the WFI Fund never exceeded the fee levels believed to be in place.

CSS Failed to Include a Summary of the Section 15(c) Evaluation Process in a 2010 WFI Fund Shareholder Report

51. As set forth in the instructions on Form N-1A (Item 27(d)(6)(i)), the WFI Fund's annual report was required to discuss the material factors and conclusions that formed the basis for the Independent Directors' approval of the advisory contracts voted on at the preceding board meeting.

52. As the fund administrator to all series of WFI, CSS was contractually responsible for preparing the series' shareholder reports, including those portions of the reports that included a discussion of the Independent Directors' Section 15(c) evaluation process as required by Item 27(d)(6)(i) of Form N-1A. CSS inadvertently omitted the text containing such information in the WFI Fund's annual report filed on March 11, 2010, thereby causing WFI to file an incomplete report.

The August 2010 Approval of the WFI Fund Advisory Contracts

53. The WFI Board held its next annual 15(c) review of CCM's and Sub-adviser B's advisory and sub-advisory contracts for the WFI Fund on August 25, 2010. As was the case for the 2009 review, a Board Book was sent to the Independent Directors and Independent Counsel in advance of the meeting, containing among other things, the *Gartenberg* Memo, the 15(c) letter and the completed questionnaire, copies of Forms ADV, financial statements, and CSS-generated advisory fee and performance charts.

54. The performance and fee comparison charts provided by CCM had the same comparisons and deficiencies as the 2009 charts. CCM provided a table of fees and expenses so that the board could evaluate the adviser's profitability, but CCM again did not fully explain its entries or its methodology for allocating expenses and provided only a single year's financial statements.

VIOLATIONS

Respondents CCM, McKinley, Burke, and Trice Violated Section 15(c) of the Investment Company Act, and Pasco Caused CCM's Violations

55. Section 15(c) of the Investment Company Act imposes a duty on the board members of a registered investment company to request and evaluate, and a duty on the adviser to furnish, such information as may reasonably be necessary for the directors to evaluate the terms of an advisory contract. That provision further requires that a majority of a fund's independent directors approve the advisory contract between the investment adviser and the fund. As discussed above, CCM did not provide all the necessary information requested by the boards (and in some instances, as to WFI, included inaccurate information). McKinley, Burke, and Trice did not follow up to obtain such information; hence, they approved CCM's initial advisory contracts for the WFT Funds without having all the information they requested as reasonably necessary for their evaluation. Accordingly, CCM,

McKinley, Burke and Trice willfully⁵ violated Section 15(c) of the Investment Company Act, and Pasco caused CCM's violations.

Respondent CSS Caused WFI's Violation of Section 30(e) of the Investment Company Act and Rule 30e-1 Thereunder

56. Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder require registered investment companies to send shareholders semi-annual and annual reports that contain such information as the Commission may require by rule or regulation. The Commission expressly designed Form N-1A "to provide investors with information that will assist them in making a decision about investing in an investment company." See Form N-1A. Item 27(d)(6) of Form N-1A further requires that, if a fund's board approved any investment advisory contract during the fund's most recent fiscal half-year, the next shareholder report must contain a discussion, in reasonable detail, concerning "the material factors and the conclusions with respect thereto that formed the basis for the board's approval." As a result of the conduct described above, CSS caused WFI's violation of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder by failing to provide the discussion of the 15(c) process in the March 2010 shareholder report, as required by Item 27(d)(6) of Form N-1A.

IV.

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

Accordingly, pursuant to Sections 9(b) and 9(f) the Investment Company Act, it is hereby ORDERED that:

- A. Respondents CCM, Pasco, McKinley, Burke and Trice cease and desist from committing or causing any violations and any future violations of Section 15(c) of the Investment Company Act;
- B. Respondent CSS cease and desist from committing or causing any violations and any future violations of Section 30(e) of the Investment Company Act and Rule 30e-1 thereunder;
- C. Respondents McKinley, Burke, and Trice each shall pay a civil money penalty in the amount of \$3,250 to the Securities and Exchange Commission within 10 days of the entry of this Order; and

⁵ 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

- D. Respondents CCM, CSS, and Pasco, jointly and severally, shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission within 10 days of the entry of this Order.

If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. 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 respondent's name 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 Brian Privor, Senior Counsel, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5546.

By the Commission.

Brent J. Fields
Secretary

Appendix A

Expense Comparison of the Eastern European Equity Fund to the Lipper Emerging Markets Category of Funds

\$25M-\$45M in Total Net Assets

| Fund Name | L Cls | Latest | Latest | Latest Total | Net | Latest | Latest | Latest | Latest | Latest |
|--------------------------|-------|----------------------------|-----------|---------------|--------------------------|-------------------------------|-------------------------|-----------------------|----------------------|----------------------|
| | | Total Net Assets (Mil. \$) | Max 12b-1 | Expense Ratio | Prospectus Expense Ratio | Advisory Fees Amount (000 \$) | Mgt Fee Amount (000 \$) | Advisory Fees % Ratio | Non 12b-1Exp % Ratio | Sub Adv Fees % Ratio |
| | | | | | | Latest Data | Latest Data | Latest Data | Latest Data | Latest Data |
| American Funds NWld;R-1 | EM | 25.2 | 1 | 1.74 | 1.79 | 81 | 81 | 0.526 | 0.188 | 0 |
| SPDR S&P Em Mkts Sm Cp | EM | 25.4 | 0.25 | | 0.65 | | | | | |
| Principal: Intl EM;R-5 | EM | 25.6 | | 1.52 | 1.52 | 302 | 330 | 1.192 | 0.15 | 0 |
| Allianz:NACM EM Opp;A | EM | 26.1 | 0.25 | 1.77 | 1.78 | 19 | 45 | 0.446 | | 0 |
| Virtus:Emg Mkt Oppty;A | EM | 27 | 0.25 | 1.79 | 1.67 | 42 | 46 | 1.032 | | 0 |
| GMO:Emerg Cntry;M | EM | 27.1 | 1 | 1.48 | 1.41 | 248 | 325 | 0.65 | | 0 |
| Third Mil Russia;A | EM | 27.1 | 0.25 | 2.75 | 1.34 | 1888 | 2116 | 1.63 | | 0 |
| Nich-App Inst:EM Mkt;Ill | EM | 27.3 | | 1.29 | 1.32 | | | | | |
| Causeway:Emer Mkt;Inst | EM | 27.7 | | 1.35 | 1.35 | -62 | -60 | -0.855 | | 0 |
| ING:Em Ctry;I | EM | 27.9 | | 1.63 | 1.54 | 401 | 433 | 1.25 | | 0.7 |
| Russell:Emerging Mkts;C | EM | 28.5 | 0.75 | 2.66 | 2.62 | 616 | 643 | 1.15 | 0.25 | 0 |
| Legg Mason P:EM Eqty;A | EM | 28.8 | 0.25 | 1.55 | 1.6 | 290 | 290 | 0.845 | | 0.575 |
| Marshall:Emg Mkt Eq;Inst | EM | 29.1 | | | 1.25 | | | | | |
| AIM Develpng Mkts;Y | EM | 29.2 | | | 1.35 | | | | | |
| Wasatch: Emg Mkt SC | EM | 30.1 | | 2.1 | 2.12 | | | | | |
| Aberdeen:Devel Mkts;A | EM | 30.3 | 0.25 | 1.7 | 1.86 | 553 | 625 | 1.113 | 0.089 | 0 |
| UBS PACE I Emrg;Y | EM | 30.9 | | 1.5 | 1.4 | 257 | 257 | 1.1 | | 0 |
| Eastern Eur:Equity;A | EM | 31 | 0.25 | 2.36 | 2.72 | 883 | 1024 | 1.25 | | 0.6 |
| American Funds NWld;SB | EM | 32 | 1 | 1.82 | 1.82 | 158 | 158 | 0.526 | 0.237 | 0 |
| Threadneedle Emg Mkt;B | EM | 33.8 | 1 | 2.62 | 2.62 | 911 | 976 | 1.105 | | 0 |
| Pac Lf:Emerg Mkts;A | EM | 35.9 | 0 | 1.42 | 1.36 | -12 | 128 | -0.03 | 0.426 | 0.23 |
| RS Inv:Emerging Mkts;K | EM | 36 | 0.65 | 1.94 | 1.94 | 266 | 266 | 0.983 | 0.186 | 0 |
| Templeton Dev Mkt;R | EM | 36 | 0.5 | 2.11 | 2.12 | 340 | 364 | 1.208 | | 0 |
| Van Kampen Emerg;B | EM | 36.7 | 1 | 2.59 | 2.59 | 1016 | 1016 | 1.241 | | 0 |
| MFS Emerg Mkts Eq;C | EM | 38.2 | 1 | 2.44 | 2.45 | 638 | 649 | 1.05 | | 0 |
| Amer Cent:Em Mkts;Inst | EM | 39.1 | | 1.46 | 1.62 | 1505 | 1505 | 1.59 | | 0 |
| Schwab Cap:FEmMkt;Inst | EM | 39.7 | | 0.61 | 0.63 | | | | | |
| Sellman Gl:Emrg Mkt;A | EM | 41.3 | 0.25 | 2.35 | 2.35 | 741 | 741 | 1.147 | | 0.65 |
| Eaton Vance Emrg Mkt;A | EM | 41.4 | 0.5 | 2.37 | 2.27 | 1174 | 1480 | 0.96 | | 0 |
| Van Kampen Emerg;C | EM | 41.7 | 1 | 2.59 | 2.59 | 844 | 844 | 1.241 | | 0 |
| AIM Develpng Mkts;B | EM | 42 | 1 | 2.34 | 2.35 | 709 | 709 | 0.896 | | 0 |
| Goldman:BRIC;I | EM | 42.5 | | 1.5 | 1.5 | 166 | 166 | 1.01 | | 0 |
| Amer Cent:NT Em Mkt;Inst | EM | 43.1 | | 1.52 | 1.67 | 128 | 128 | 1.583 | | 0 |
| SA Funds:Emerg Mkts Val | EM | 43.2 | | 1.45 | 1.45 | | | | | |
| Legg Mason Gl:EM;IS | EM | 43.3 | | | 1.25 | | | | | |
| Laudus Mo EM;Inst | EM | 43.8 | | 1.45 | 1.45 | | | | | |
| DWS Em Mkts Eqty;Inst | EM | 44.5 | | 1.38 | 1.38 | | | | | |
| Franklin India Gr;Adv | EM | 45 | | 1.4 | 1.4 | | | | | |
| AVERAGE/COUNT | | 154906 | 0.611 | 1.713 | 1.7 | 1073394 | 1172140 | 0.949 | 0.209 | |
| MEDIAN | | 25.3 | 0.5 | 1.7 | 1.65 | 561 | 643 | 1 | 0.229 | |

The data represented is based on the Lipper Emerging Markets Classification of Funds. As of 6.30.09, there were 400 funds in the Lipper Emerging Markets universe.