

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77473 / March 30, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3761 / March 30, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4360 / March 30, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32060 / March 30, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17186

In the Matter of

**BURRILL CAPITAL
MANAGEMENT, LLC; G.
STEVEN BURRILL, CPA;
VICTOR A. HEBERT, ESQ.;**
and HELENA C. SEN, CPA,

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
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, AND RULE
102(e)(1)(iii) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Burrill Capital Management, LLC, and pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act, and Rule 102(e)(1)(iii) of the Commission’s

Rules of Practice against G. Steven Burrill, CPA, Victor A. Hebert, Esq., and Helena C. Sen, CPA (collectively, “Respondents”).¹

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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934, 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 and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice, 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 finds² that:

Summary

1. These proceedings concern the misappropriation of more than \$18 million in investor funds by Burrill Capital Management, LLC (“BCM”), a San Francisco-based exempt reporting adviser, and its CEO, G. Steven Burrill (“Burrill”). From December 2007 through August 2013, Burrill, through BCM, misappropriated approximately \$18 million under the guise of “advanced

¹ Section 4C provides, in relevant part that:

The Commission may . . . deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (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.

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.

² The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

management fees” from Burrill Life Sciences Capital Fund III (“Fund III”), a \$283 million venture capital fund advised by BCM. Burrill took this money to cover cash shortages in his non-Fund III related Burrill & Company businesses, pay employee salaries, and to support his lavish lifestyle, including expensive vacations and gifts.

2. By mid-2013, Burrill had misappropriated approximately \$13 million more in management fees from Fund III than it was required to pay in fees over the entire life of the fund. Burrill was aided in his scheme by Victor Hebert, Esq. (“Hebert”), Chief Administrative Officer, Managing Director and Chief Legal Officer for the Burrill entities, and Helena Sen, CPA (“Sen”), the Controller and most senior accounting person for the Burrill entities.

3. In August 2013, several members of Fund III’s Investment Committee discovered the misappropriation and notified Fund III’s investors.

Respondents

4. **Burrill Capital Management, LLC (“BCM”)**, is a Delaware limited liability company and filed reports as an exempt reporting adviser (“ERA”) with the Commission from April 2012 to January 2015, when it withdrew its ERA registration. BCM was wholly owned by Steven Burrill and had its principal place of business in San Francisco, California. BCM acted as the investment adviser to several venture capital funds operated by Burrill, including Fund III. BCM is currently defunct and is no longer authorized to do business in California.

5. **G. Steven Burrill, CPA**, age 71, resides in San Francisco, California. Burrill is a CPA licensed in California (inactive since 1998; delinquent status from 2014). From 1977 to 1993, he was an audit partner at a major auditing firm, leading the high/tech manufacturing group of the firm. Burrill left the auditing firm in 1993 and formed Burrill & Craves, which later became Burrill & Company, LLC (“Burrill & Co.”). Initially formed to provide advice to companies on business strategy and partnerships, the firm, among other things, raised venture capital funds focused on the biotechnology industry. Burrill owned 100% of Burrill & Co. and BCM. Burrill was a member of Fund III’s General Partner.

6. **Victor A. Hebert**, age 78, resides in Piedmont, California and is a licensed attorney in California. Hebert worked at Burrill & Co. from October 2008 to February 2014 as Chief Administrative Officer, Managing Director, and Chief Legal Counsel. From 2009 through 2013, he also served as the Chair of Fund III’s Investment Committee and oversaw Burrill & Co.’s accounting department. From October 2011 until he was removed, Hebert was a member of Fund III’s General Partner. Prior to joining Burrill & Co., Hebert practiced law with a San Francisco based law firm for 46 years, where he was a partner for over 25 of those years. That firm dissolved in 2008.

7. **Helena C. Sen, CPA**, age 62, resides in Orinda, California. Sen was a CPA licensed in California from 1989 (inactive since early in her employment with Burrill & Co.; surrendered her license in November 2015). From April 2006 through March 2014, Sen was Burrill & Co.’s Controller and the most senior person in its accounting department. Sen reported to Hebert in his role as Chief Administrative Officer.

Other Relevant Entities

8. **Burrill Life Sciences Capital Fund III, LP (“Fund III” or the “Fund”)** is a private pooled investment vehicle and a Delaware limited partnership formed by Burrill in 2006. Fund III is a \$283 million, 10-year venture capital fund that invests in life sciences companies, globally, from early stage companies to public companies. Burrill Life Sciences Capital Fund III Partners, LP was the General Partner (“GP”) of Fund III during the relevant time period and BCM served as Fund III’s investment adviser. Fund III was initially set to expire in February 2016, but was extended in March 2015, to December 2017.

9. **Burrill Life Sciences Capital Fund III Partners, LP, (“GP”)** is a Delaware limited partnership and was the General Partner of Fund III during the relevant time period. It was removed as the General Partner, effective March 2014. The members of the GP were Burrill, Hebert (from October 2011) and a group of three other individuals who were not implicated in Burrill’s scheme. The GP was entitled to Fund III’s management fees, or alternatively, it could designate another entity to receive the fees. In exchange for management fees, the GP was responsible for managing, controlling and conducting the affairs of Fund III. The GP selected BCM to provide advisory services to Fund III.

10. **Burrill & Company, LLC (“Burrill & Co.”)** is a Delaware limited liability company created in 1993 and is wholly owned by Burrill. Burrill & Co. was the holding company for Burrill’s several other business ventures, including his media group, merchant banking group and Burrill’s personal ownership interests in the Burrill venture capital funds, including Fund III. Burrill & Co. is currently nonoperational. Burrill & Co. did not participate in the management of Fund III.

Facts

A. Background

11. In 2006, Burrill formed Fund III, a \$283 million venture capital fund focusing on investments in life sciences companies, globally, from early stage companies to public companies (known as “portfolio companies”). Fund III had a 10-year lifespan, and originally was set to expire in February 2016. Fund III is structured as a Limited Partnership, with Burrill Life Sciences Capital Fund III Partners, LP serving as its GP. Fund III’s investors are its limited partners, with the six largest investors making up the Limited Partners Advisory Committee (“LPAC”). The investors include state pension funds, public companies and institutional investors.

12. Fund III is governed by a Limited Partnership Agreement (“LPA”), which delineates, among other things, the manner and amount of management fees the GP is entitled to from Fund III for managing the fund. According to the LPA, the GP (or its designee) is entitled to 2% of committed capital for six years payable on the first day of each fiscal quarter for services to be rendered during that quarter (and then 2% of cost basis of the investments, plus reserves, after the initial 6 years). From the management fee, as enumerated in the LPA, the GP was to cover expenses in connection with the management of the fund (e.g., salaries, travel, wages, rent).

Although Fund III's GP was technically entitled to receive the management fee, in practice this fee was deposited in several different Burrill entities' bank accounts, primarily BCM's. The LPA did not authorize Burrill to take management fees in advance, nor did it authorize Burrill to take loans from Fund III. In addition, the LPA explicitly prohibited any actions that would be detrimental to the activities and affairs of the fund and required that all conflicts of interest promptly be disclosed to the LPAC. Burrill signed the LPA in his capacity as a member of the GP.

13. At the outset of Fund III, each of its investors committed a specific amount of capital and paid a percentage of this capital commitment to make initial investments in Fund III's portfolio companies. The investors contractually agreed to pay the remainder of their capital commitment over the life of Fund III through periodic capital call demands made by the GP. According to the LPA, this capital would then be used to invest in Fund III's portfolio companies and pay Fund III management fees as well as certain other Fund III expenses.

14. From late 2008 through early 2014, members of Fund III's Investment Committee, which was comprised of Burrill, Hebert, and three other individuals, met multiple times a month to determine which portfolio companies Fund III should invest in as well as determine the amount of capital needed, in order to make additional follow-on investments in the portfolio companies. After these meetings, Burrill and Sen, on behalf of Fund III's GP, periodically sent capital call demand letters to Fund III's limited partners requiring them to fund the remaining portions of their capital commitment so that Fund III could make additional investments in the portfolio companies.

15. Burrill operated a number of entities under the Burrill enterprise including other venture capital funds as well as merchant banking and media businesses. Hebert and Sen were employed by BCM and, although they provided services to BCM and Fund III, they also provided services to other Burrill-related entities. Burrill used BCM as the operating entity through which he received income from, and paid expenses for, all of the various Burrill-related entities – including expenses that were wholly unrelated to Fund III's business. He also took draws from BCM, and charged personal expenses to, BCM, which were booked as additions to his draws.

16. BCM was Fund III's investment adviser. Burrill wholly owned, and controlled, BCM. As an investment adviser, BCM owed a fiduciary duty to its clients, one of which was Fund III. This required BCM to act in the utmost good faith, and put the interests of its clients ahead of its own. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963). This is so even though BCM advised venture capital funds and filed reports as an "exempt" reporting adviser.

B. Burrill Misappropriates, and Hebert and Sen Aid and Abet the Misappropriation of, Fund III's Money

17. In late 2007, BCM began to face cash flow shortages. According to BCM's accounting records, the expenses for the Burrill-related entities, as well as Burrill's personal expenses, far exceeded the revenue his businesses were generating. In late 2007, Sen met with Burrill and told him that due to BCM's cash deficit, BCM was unable to make payroll or pay BCM's expenses for that period. Burrill instructed Sen to take \$400,000 from Fund III to make up

the cash shortfall and to treat the transaction as an “advance on management fees” that the GP expected to earn in the first quarter of 2008. Burrill told Sen the advance management fees were “strictly a timing issue” (because BCM was entitled to take the management fees four days later on January 1, 2008).

18. Sen had read the LPA, and understood that Fund III was supposed to pay management fees to the GP at the beginning of each quarter for services to be provided to the fund during that quarter. Nonetheless, at Burrill’s direction, Sen transferred money from Fund III’s bank account to BCM. She recorded the transfer as a “prepaid expense” in Fund III’s books and records.

19. In mid-2008, Sen told Burrill that BCM was again short of cash, and unable to pay its expenses. BCM’s expenses included salaries and Burrill’s draws and personal expenses. Burrill told Sen to cover the shortfall by taking an advance on management fees from Fund III. Sen followed Burrill’s instruction and again booked the management fee advance to the general ledger as a prepaid expense. From that point forward through July 2013, on many occasions when BCM faced a cash shortfall in a quarter, Sen acted under Burrill’s directive to cover the deficit by taking money from Fund III, because it – as compared to all of Burrill’s other entities – had the most money available to it in the form of committed, but still-uncalled capital.

20. Hebert joined Burrill & Co. in October 2008 as Chief Administrative Officer, Chief Legal Officer and Managing Director, and learned about Burrill’s practice of taking money from Fund III to fund BCM’s cash shortages. Sen began reporting to Hebert in late 2008 and in the first part of 2009, she told Hebert about the practice of taking money from Fund III to meet BCM’s cash flow shortages, including Sen’s and Hebert’s own salaries and Burrill’s draws. Hebert never told Sen to stop taking money from Fund III, and the practice did not stop until Fund III ran out of money.

C. Cash Flow Meetings

21. From early 2009 through July 2013, Sen, Hebert and Burrill met frequently to discuss the Burrill enterprise’s cash flow. At these meetings, Sen informed Hebert and Burrill about the various Burrill entities’ cash flow deficits. The three discussed the cash shortages and decided to cure them by continuing to take money from Fund III, and book it to the general ledger as prepaid expenses. Sen regularly informed Burrill and Hebert at the cash flow meetings how much money they had taken under the guise of advanced management fees and also kept track of the transfers on a document referred to internally as a “cash needs spreadsheet”. BCM’s accounting manager provided these spreadsheets to Burrill when he signed the Fund III cash transfer authorizations. On at least one occasion, Burrill directed Sen to take money from Fund III and transfer it to his and his wife’s joint bank account, when there were no other funds available to meet Burrill’s personal monthly draw, which he collected for providing services to Fund III and his other non-Fund III related entities. In response to Burrill’s directive, Sen transferred money from Fund III to BCM and then to Burrill and his wife’s joint bank account.

22. By approximately the first quarter of 2012, the amount of money Burrill had taken from Fund III exceeded the total amount of management fees that the GP could earn over the life of the fund, which was set to expire in February 2016. At that point, in Q1 2012, no further management fees were due to the GP from Fund III. Burrill, Sen and Hebert, continued to take money from Fund III under the guise of advance management fees. By May 2013, the money Burrill had taken exceeded the total management fees that could be earned over Fund III's life by at least \$13 million – approximately four years' worth of fees. Burrill used the \$13 million to pay for, among other things, salaries, rent, charitable contributions, Burrill's family vacation to St. Barth's and Paris, jewelry, gifts and travel for Burrill's girlfriend, gifts for Burrill's wife, private jets and private car service for Burrill and his family members.

D. Capital Calls and The "Cushion"

23. Not only did Burrill, Hebert, and Sen misappropriate or aid and abet the misappropriation of Fund III's existing cash, they also asked investors for more money than was needed for Fund III's follow-on investments so that they could continue to fund BCM's operations. From early 2009 through approximately early 2014, Hebert led Fund III's weekly Investment Committee meetings. After the meetings, Hebert told Sen how much money the committee agreed was needed for follow-on investments so that Sen could prepare the capital call letters. Sen drafted the capital call letters, which specifically stated that the "proceeds of the capital call would be used for [a particular investment]" or for general "follow-on investments" in Fund III's portfolio companies. With Burrill's permission, Sen inserted Burrill's electronic signature into the capital call letters and sent them to the investors.

24. In February 2009, Sen began inflating the amounts included in the capital call demand letters above what the Investment Committee determined was needed for follow-on investments and the then due management fees and expenses. Sen called the inflated excess portion of the capital call the "cushion." This "cushion" ranged from \$50,000 to \$1.5 million on the applicable capital calls. Sen, knowing Burrill expected her to have excess cash on hand to advance fees, added a "cushion" so there would be sufficient money in Fund III's bank account for Burrill to pay, among other things, BCM's operating expenses (including her and Hebert's salaries as well as non-Fund III related expenses) and Burrill's draws, personal expenses and Fund management fees and expenses.

25. Sen told Hebert about the excess portion of the capital call in 2009. Sen, Hebert and Burrill discussed the excess at the cash flow meetings, after which, Burrill, with Hebert's knowledge, called in millions of dollars in additional capital from Fund III's investors. Burrill and Hebert knew, or were reckless in not knowing, that the money called from Fund III investors would be used in part to continue funding BCM's cash flow shortages, significant portions of which were wholly unrelated to Fund III's business and included propping up Burrill's other business ventures that were operating at a loss. Neither of them disclosed the "cushion" to Fund III's investors, its Investment Committee, or any other members of Fund III's GP. Moreover, Burrill and Sen knew, or should have known, that the capital call letters misled investors into

thinking that the capital demanded was used only for follow-on investments and currently due management fees and expenses.

26. From 2008 until August 2011, in addition to preparing the capital call letters, Sen signed bank transfers authorizing cash transfers from Fund III to BCM to cover BCM's expenses (as well as Burrill's personal expenses). In August 2011, Sen stopped signing the transfer authorizations because she was uncomfortable with how high the advanced fee balance had grown (approximately \$12 million). From that point forward, Burrill became the primary signer of the bank transfer authorizations.

E. Delayed Milestone Payments to Investors

27. Burrill, with Sen's assistance, also funded BCM's cash deficits by delaying the distributions of portfolio company milestone payments and stock payments to Fund III's investors. Fund III periodically received payments from Fund III's portfolio companies as they met specific predetermined milestones. Burrill and Sen, on behalf of the GP, were responsible for distributing those payments to Fund III's investors based on their ownership percentage in Fund III, but Burrill – with Sen's assistance – instead used that money to pay BCM's expenses, including expenses that were wholly unrelated to Fund III's business.

28. In September 2012, Sen emailed Burrill that BCM had no cash available to make payroll and stated “[t]here is only one other option, which is to delay a distribution” of the approximately \$1 million in milestone payments paid into Fund III and awaiting distribution to investors. Burrill directed Sen to withdraw the milestone payments from Fund III, and she did. Sen recorded the withdrawal in Fund III's prepaid expense account. The following month, in order to make the required milestone payments to Fund III investors, Sen added a \$1 million “cushion” to the October 31, 2012 capital call demand. Burrill and Sen then used the “cushion” to pay the investors their milestone payment with the investors' own money. None of this was disclosed to investors.

F. The Scheme is Revealed to Investors

29. In late August of 2013, Fund III's Investment Committee members became aware that virtually all the committed capital in Fund III had already been called in and spent. They called an emergency meeting of Fund III's Investment Committee.

30. On September 4, 2013, Burrill and Hebert met with the Investment Committee to discuss Fund III's cash reserves. At Burrill's direction, Sen created a spreadsheet showing how the approximately \$18 million taken under the guise of advanced fees was spent (including Burrill's personal expenses). During the meeting, Burrill admitted that he had taken money from Fund III to develop other venture funds under the Burrill brand. He said he owed Fund III approximately \$7.8 million and Sen passed out a spreadsheet showing approximately \$7.8 million was spent on other venture funds' development costs. Burrill directed Sen not to hand out the other portion of the spreadsheet which detailed how the remainder of the fees were spent, which included Burrill's personal expenses.

31. Before October 2013, Fund III's investors did not know that Burrill had misappropriated approximately \$18 million from the Fund under the guise of "advance management fees," nor did they know that Burrill had taken \$13 million more from Fund III than the GP was entitled to earn over the entire life of the Fund. On October 27, 2013, three of the Investment Committee members sent a letter to the Fund III LPAC and informed them about the misappropriation. The LPAC subsequently removed the GP (which included Burrill and Hebert) from managing Fund III, effective March 2014. In March of 2014, Hebert resigned from Burrill & Co. and Sen's position with Burrill & Co. was eliminated.

32. All told, Burrill used approximately \$4.6 million of the money he misappropriated from Fund III to pay for his cash draws and personal expenses, including family vacations to St. Barth's and Paris, jewelry from Tiffany&Co., travel, charitable contributions, private jets, private cars, and gifts.

Violations

33. As a result of the conduct described above, BCM and Burrill willfully violated, and Hebert willfully aided and abetted and caused, BCM's and Burrill's violations of Section 206(1) of the Advisers Act which prohibits an investment adviser from employing any device, scheme, or artifice to defraud any client or prospective client.

34. As a result of the conduct described above, BCM and Burrill willfully violated, and Hebert and Sen willfully aided and abetted and caused, BCM's and Burrill's violations of Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.³

35. As a result of the conduct described above, BCM and Burrill willfully violated, and Hebert and Sen willfully aided and abetted and caused, BCM's and Burrill's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit an investment adviser to a pooled investment vehicle from making any untrue statement of a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading to any investor or prospective investor in the pooled investment vehicle, or engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative with respect to an investor or prospective investor in a pooled investment vehicle. A violation of 206(4) and the rules thereunder does not require scienter. *SEC v. Steadman*, 967 F. 2d 636, 647 (D.C. Cir. 1999).

³ Scienter is required for violations of Section 206(1), but negligence is sufficient for violations of Sections 206(2) or 206(4) and Rule 206(4)-8 thereunder. See *Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979); *SEC v. Daifotis*, 874 F. Supp. 2d 870, 887 (N.D. Cal. June 12, 2012).

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act, and Section 9(b) of the Investment Company Act and Sections 4C and 21C of the Exchange Act and 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

- A. Respondents BCM, Burrill and Hebert cease and desist from committing or causing any violations and any future violations of Sections 206(1) of the Advisers Act.
- B. Respondents BCM, Burrill, Hebert and Sen cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.
- C. Respondents BCM, Burrill, Hebert and Sen cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-8 thereunder.
- D. Respondents Burrill, Hebert and Sen be, and hereby are:
 - (1) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;
 - (2) 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.
- E. Respondent BCM is censured.
- F. Respondents Burrill and Sen are denied the privilege of appearing or practicing before the Commission as accountants.
- G. Respondent Hebert is denied the privilege of appearing or practicing before the Commission as an attorney.
- H. Any reapplication for association by the Respondents 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.

I. Respondents Burrill and BCM shall, jointly and severally, pay disgorgement of \$4,600,000.00, and prejudgment interest of \$185,000.00 to the Securities and Exchange Commission (for a total of \$4,785,000.00). \$2,125,000.00 is due within 10 days of the date of this Order. The remaining \$2,660,000.00 is due within 90 days of the date of this Order; *provided* that any payments Respondents Burrill and BCM make directly to Fund III during this 90-day period, reflected by evidence acceptable to the Commission staff, will be credited, dollar-for-dollar, towards the satisfaction of Respondents Burrill's and BCM's disgorgement and prejudgment interest obligations.

J. To the extent payment of \$4,600,000.00 in disgorgement and \$185,000.00 prejudgment interest is not paid to the Commission (or credited dollar-for-dollar as provided in Paragraph I) within 90 days of this Order, all amounts not paid (or credited) will remain due and payable to the Commission and additional interest shall accrue pursuant to SEC Rule of Practice 600 from the date of the Order.

K. Respondents Burrill and BCM shall, jointly and severally, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,000,000.00 to the Securities and Exchange Commission. If timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

L. Respondent Hebert shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$185,000.00 to the Securities and Exchange Commission. If timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

M. Respondent Sen shall pay a civil monetary penalty in the amount of \$90,000.00 to the Securities and Exchange Commission. If timely payment of a civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be made in the following installments: (1) Sen will make an initial payment of \$35,000 within 10 days of the entry of the Order; (2) within 90 days of the entry of this Order, \$13,750; (3) within 180 days of the entry of this Order, \$13,750; (4) within 270 days of the entry of this Order, \$13,750; and (4) within a year of the entry of this Order, \$13,750. If any payment is not made by the date the payment is required by this Order, the entire outstanding unpaid balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

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 BCM, Burrill, Hebert and/or Sen 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 Erin Schneider, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

N. For good cause shown, Commission staff may extend any of the payment dates set forth in this Order.

O. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs I, K, L and M above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

P. After receipt of the disgorgement, interest, and penalties referenced in paragraphs I, K and L above (distribution fund), the Commission shall, within 30 days after receipt of the funds,

pay such funds to Fund III which suffered a net harm as a result of the violations described in this Order. With respect to payments received pursuant to paragraph M, the Commission shall pay such funds to Fund III on a timely basis. Commission staff will seek the appointment of a tax administrator as the ordered payment constitutes a qualified settlement fund under section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Taxes, if any, and related administrative expenses will be paid from the distribution fund.

Q. After receipt of the penalty payments referenced in paragraph M above (distribution fund) and any additional payment received pursuant to paragraph M, the Commission shall, on a timely basis, pay such funds to Fund III which suffered a net harm as a result of the violations described in this Order. Commission staff will seek the appointment of a tax administrator as the ordered payments constitute a qualified settlement fund under section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Taxes, if any, and related administrative expenses will be paid from the distribution fund.

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