

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4885 / April 16, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18437

In the Matter of

ARLINGTON CAPITAL MANAGEMENT, INC.
AND JOSEPH F. LoPRESTI,

Respondents.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that administrative proceedings and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Arlington Capital Management, Inc. (“Arlington”) and pursuant to Sections 203(f) and 203(k) of the Advisers Act against Joseph F. LoPresti (“LoPresti”) (collectively, “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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. From at least 2012 to 2015, Arlington, a registered investment adviser, issued misleading advertisements about its investment performance in written communications to clients and prospective clients and in weekly radio broadcasts and video webcasts by Joseph F. LoPresti, Arlington's President, 80 percent owner, and Chief Compliance Officer ("CCO").

2. During the relevant period, Arlington invested its clients' assets in a variety of model portfolios that it designed from computer trading models developed at Arlington. These computer models, collectively known as the Proactive Asset Allocation Strategy ("PAAS"), used proprietary indicators and asset class rankings to trigger signals to buy or sell securities in clients' accounts. Arlington began implementing the PAAS models to manage client accounts in 2010. Over the years, Arlington made numerous adjustments or improvements to the PAAS models based on additional historical testing and/or consideration of recent market results. Each new iteration of the PAAS model was implemented in order to improve return or reduce volatility based on back-tested historical results.

3. Arlington regularly advertised performance results using the PAAS models' back-tested results running back to 1995. At times, after Arlington adjusted a model, the performance results under previous iterations of the model would be restated as if the new version of the model had been in effect during the entire period. In some instances, Arlington highlighted the performance of its models in advertisements without disclosing the represented returns were hypothetical, back-tested performance results. In other advertisements, this information was disclosed in small print or in ways that otherwise lacked prominence. And in all advertisements, Arlington failed to disclose that the represented performance results were derived using models that had been adjusted over the years with the benefit of hindsight.

4. During the relevant time period, Arlington also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act in connection with its advertisements. LoPresti was responsible for Arlington's advertising and, as CCO, its policies and procedures.

Respondents

5. Arlington is an Illinois corporation founded in 2000, with its principal place of business in Arlington Heights, Illinois. It has been registered with the Commission as an investment adviser since March 2014 and, prior to 2014, was registered with the state of Illinois. Arlington manages approximately 870 accounts, mostly composed of individuals without high net worth. Arlington has \$268 million of regulatory assets under management.

6. LoPresti, age 54, is an 80 percent owner of Arlington and is the firm's president and senior portfolio manager. From 2004 until July 2016, LoPresti was Arlington's chief compliance officer.

The Investor Education Institute

7. LoPresti also operated an entity known as the Investment Education Institute (“IEI”) through which he trained individuals to manage their own investments using a version of Arlington’s models. Arlington and LoPresti also used IEI to solicit new clients for Arlington. IEI is not incorporated in any state, is not a registered investment adviser, operated at the same location as Arlington, and did not have separate personnel from Arlington.

Facts

Arlington’s PAAS System Models

8. In 2008, Arlington began to develop a system of models known as its “Proactive Asset Allocation Strategy” (“PAAS”). The PAAS models signaled which equity asset classes/sectors to invest in through a proprietary asset class ranking system that ranked more than 100 asset classes based on three-month, six-month, and twelve-month performance. The PAAS system used proprietary indicators developed by Arlington to track global market trends, which triggered a “global signal” to either buy securities for each client account or to sell securities and hold cash in the account until the next “buy signal.”

9. Beginning in or about 2010, Arlington managed its clients’ assets using the PAAS models. The computer models made auto-generated investment recommendations based on Arlington’s asset class ranking system. Arlington generally managed client accounts based on these recommendations, but at times Arlington’s Investment Committee, consisting of LoPresti and one other individual, would exercise judgment and make investment decisions that differed from the recommendations given by the computer models.

Back-tested Model Results and Modifications

10. In an effort to optimize PAAS over a long period of time and covering a wide variety of market conditions, Arlington conducted numerous back-tests on its models to obtain hypothetical investment results dating back as far as January 1, 1995. It began to regularly utilize the PAAS models for client portfolio management sometime between 2010 and 2012. In advertisements, Arlington compared the performance of the back-tested models to a benchmark. In most cases, Arlington cited to the performance of its PAAS computer models in its advertisements rather than actual client performance.

11. Arlington’s advertisements included hypothetical back-tested PAAS performance not only for the period before the models were created, but also for the period after. After PAAS was created, Arlington continued to research ways to improve the models’ predictability of market performance and made numerous adjustments to the models over the years.

12. Some of the adjustments Arlington incorporated to seek to improve the models included incorporating the most recent market data and adjusting the models’ criteria or rulesets after PAAS had incorrectly predicted market movements. When the models did not perform as well as expected as a result of a “global signal” that was triggered too late or too early or because of an untimely selection of an asset class, Arlington would incorporate the new market data and

consider revising the model. Each new iteration of the models incorporated changes that either enhanced their back-tested performance or reduced their back-tested volatility. As a result, the hypothetical back-tested performance of the newest versions of the PAAS models was often superior to the actual results of the models that were in effect at the time. Arlington's advertisements failed to disclose the material effects that these adjustments had on the advertised results.

13. For example, while the Dow Jones Industrial Average rose by 11 percent in 2010, one of Arlington's models gave a faulty sell signal that resulted in Arlington's clients missing out on gains when the market rose that year. After the losses in 2010, Arlington revised that particular model in a manner such that it would have correctly predicted the market in 2010. The back-tested results for the new iteration of the model reflected a 21 percent gain in 2010, while the version of the model that was in effect in 2010 actually had negative returns. Arlington's advertisements incorporated the revised 2010 returns into its advertised aggregate performance without disclosing how the reported performance differed from the model's actual performance.

Arlington's Misleading Statements and Advertisements Concerning Performance

14. Arlington's modifications to the models improved the models' hypothetical back-tested returns on a risk-adjusted basis. Arlington regularly highlighted the strong back-tested performance of its models without disclosing that the reported results reflected revisions to the models and differed from the actual performance of the models that were in effect during those periods.

15. For example, in February 2013, a prospective client asked LoPresti for some information about the PAAS models' performance. LoPresti responded by citing impressive track records for two of the models – average annual returns of 23.99 percent and 53.19 percent, respectively. LoPresti did not disclose that these returns reflected the *post-hoc* revisions to the models that enhanced back-tested performance and differed from the actual performance of the models that were in effect during those periods. Instead, he stated: "You know what they say about past returns... that they are no guarantee of future results. However, I have no reason to believe our performance will vary significantly from historic results."

16. As another example, in May 2014, a client asked LoPresti for performance data for one of the models over the last ten years. LoPresti responded by citing average annual returns of 16.78 percent. When the client then asked for yearly returns, LoPresti provided returns showing gains in all but one year, including, as noted in Paragraph 13 above, a 21 percent return for 2010 that was the result of after-the-fact adjustments to the model. All of the returns that LoPresti provided reflected hypothetical back-tested results from the model in effect as of May 2014, rather than the actual historical returns from the version of the model that was in effect during that period, and did not disclose the discrepancy between the hypothetical returns and the actual historical model or actual client returns.

17. From at least 2012 to 2015, Arlington distributed advertisements to clients and prospective clients about its investment advisory services that contained misleading, hypothetical back-tested performance results. Arlington advertised its purported performance in several formats and venues, including in written materials given to Arlington clients and prospective

clients, in PowerPoint presentations shown at Arlington’s seminars for prospective clients, on Arlington’s website, in weekly updates delivered to clients by audio, video, or printed format, in investment courses conducted for members of the IEI, and during a weekly radio show called “Empowered Investing” hosted by LoPresti.

18. Some of the advertisements did not disclose that the performance results were based on hypothetical, back-tested portfolios. Some advertisements did disclose that the results were hypothetical and the result of back-testing but, in the case of print advertisements, these disclosures lacked prominence and clarity and were in a much smaller typeface that was difficult to read and/or appeared at the end of the advertisement rather than on the same page as the performance data. For example, in 2014, Arlington held a “Proactive Investment Management Seminar.” Included in the seminar was a 47-page document explaining the PAAS system and examples demonstrating that the back-tested models outperformed a global stock index. The last example appeared on page 33 of the presentation, while the disclosures concerning the use of back-testing do not appear until page 47 of the document and are printed in much smaller type than the other pages.

19. Also in 2014, Arlington sent an advertisement, in the form of a letter signed by LoPresti, to several prospective clients representing that one of the PAAS Models had an annual compounded rate of return of over 20 percent, compared to 1.75 percent for the S&P 500 Index, during the past 19 years. The letter contained disclosures that the results were hypothetical. However, these disclosures were printed in a very small typeface, as seen from this sample excerpt:

All Proactive Asset Allocation Strategy (PAAS) Models were traded in simulated portfolios based on the buy, sell and reallocation disciplines developed by the Investor Education Institute. The returns shown are entirely hypothetical and for illustrative purposes only. The Investor Education Institute believes that the returns illustrated are substantially similar to those an actual investor would have received had they invested in the Model(s) at its inception, held it throughout the entire period and been charged fees at the same rate that the study assumes. It should not be assumed that future model performance will equal the past performance of the model.

20. Further, Arlington’s representation in this disclosure that “[IEI] believes that the returns illustrated are substantially similar to those an actual investor would have received had they invested in the Model(s) at its inception” was false because the models’ holdings and the timing of “signals” had been modified after the fact, which generated better back-tested performance results in the form of higher returns and/or lower volatility. Clients who had been invested in the models at the time would not have benefited from the performance-enhancing *post-hoc* modifications to the models.

21. None of Arlington’s advertisements disclosed that the models’ holdings and the timing of “signals” had been modified after the fact in a way that generated better back-tested performance results.

22. LoPresti also prepared weekly audio and video updates for IEI members and Arlington clients to access on Arlington’s website. During many of these presentations, LoPresti discussed the PAAS models’ performance without making clear that such performance was hypothetical. Some of these updates contained brief disclosures at the end that stated the models’ returns were hypothetical, but they did not disclose that adjustments to the models had improved the stated returns or that the hypothetical returns exceed actual returns as a result of these adjustments.

23. LoPresti also highlighted Arlington's PAAS models' performance in his weekly radio show, "Empowered Investing." In several instances, LoPresti did not disclose that the model results were hypothetical and back-tested. In all cases, LoPresti did not disclose that the advertised performance was based on revised models that differed substantially from the models in effect during part of the period and from actual client performance. LoPresti also did not disclose how actual model and client performance differed from the advertised performance.

24. Arlington's performance advertising at times also contained misleading statements concerning comparisons to benchmarks. Several Arlington advertisements compared the PAAS models' hypothetical performance to the S&P 500, but presented erroneous returns for the S&P 500. For example, in the advertisement described in Paragraph 19, Arlington compared its ETF model's nineteen-year back-tested average annual return of 20.25 percent to the S&P 500 over the same period. The advertisement represented that the S&P 500 returned 1.75 percent annually over the previous nineteen years, when in fact the S&P 500's average annual return was more than 7 percent. Similarly, on a radio broadcast in 2015, LoPresti compared the PAAS model's performance to a 2.27% average annual return for the S&P 500 over the previous twenty years, when the S&P 500's actual return over that period was 7.8 percent.

25. According to Arlington's written policies and procedures, LoPresti was responsible for approving all performance advertising by Arlington during the relevant time period.

Deficient Written Policies and Procedures

26. From 2014 to 2015, Arlington maintained a compliance manual that it had created with the assistance of a compliance consultant. The manual included a one-page section on advertising, and stated that all advertising must be approved before use by a principal of the firm. The compliance manual did not have any provisions addressing presentation of investment performance in a manner designed to comply with the Advisers Act and the rules thereunder or the permissible content of Arlington's performance advertising, or designed to ensure the accuracy of performance advertising. Arlington's policies and procedures failed to include any safeguards – except for approval by a principal – designed to prevent misleading advertising.

27. As a result, Arlington failed adequately to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its advertisements.

Violations

28. As a result of the conduct described above, Arlington and LoPresti willfully violated¹ 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

¹ 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 v. Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

upon any client or prospective client. Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act, but may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

29. As a result of the conduct described above, Arlington willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) promulgated thereunder. Section 206(4) of the Advisers Act prohibits any investment adviser from engaging in “any act, practice, or course of business which is fraudulent, deceptive, or manipulative,” and authorizes the Commission to prescribe rules designed to prevent such conduct. Rule 206(4)-1(a)(5) under the Advisers Act makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Advisers Act for a registered investment adviser to publish, circulate, or distribute any advertisement which contains any untrue statement of a material fact, or which is otherwise false or misleading. A showing of negligence is also sufficient to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

30. As a result of the conduct described above, Arlington willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which, among other things, requires that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder. A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

31. As a result of the conduct described above, LoPresti caused² Arlington’s violations of Section 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder.

Respondents’ Remedial Efforts

32. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. During the Commission’s investigation, Respondent Arlington revised its advertising policies and procedures, named a new CCO, and hired a new compliance consultant (the “Consultant”) to assist Arlington with compliance.

33. The Consultant conducted a comprehensive review of Arlington’s compliance program. The Consultant completed its work on this review and submitted a report detailing its work, findings, and recommendations to Arlington in June 2017 (“Compliance Report”). Arlington has implemented, or is in the process of implementing, all of the Consultant’s recommendations. Arlington has retained and will continue to retain the Consultant going forward. As of the date of this Order, the Consultant’s work included the following:

² Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *See In re KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), *recon. denied*, 55 S.E.C. 1 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

- a. The Consultant conducted an on-site review of Arlington's business and Arlington's implementation of the firm's policies and procedures.
- b. The Consultant assisted with the revision of Arlington's policies and procedures, including but not limited to those pertaining to advertising.
- c. The Consultant reviewed Arlington's advertising and marketing materials.
- d. The Consultant enrolled both LoPresti and Arlington's new CCO in its Investment Adviser Certified Compliance Professional ("IACCP") program. Arlington's new CCO has completed the IACCP program. LoPresti has substantially completed the program. Both Arlington's new CCO and LoPresti will sit for the program's certification examination.
- e. Arlington has licensed and will implement the Consultant's Compliance Guardian software to assist Arlington in tracking its compliance activities.
- f. Arlington has engaged the Consultant to conduct an annual compliance review for the year ended December 31, 2017 and to review Arlington's advertising and marketing materials through December 31, 2018.

Undertakings

34. **Consultant's Report.** Respondent Arlington shall require the Consultant to complete a review of Respondent Arlington's implementation of the Consultant's recommendations from its Compliance Report, as well as any recommendations that arise out of its annual compliance review for the year ended December 31, 2017, within one hundred twenty (120) days of the entry of this Order. The Consultant shall submit a report ("Consultant's Report") to Respondent Arlington detailing its review and findings, and stating whether any additional action is necessary to implement the Consultant's recommendations. Respondent Arlington shall furnish a copy of the Consultant's Report to the Commission staff within thirty (30) days of receipt. The Consultant's Report shall be submitted to Jeffrey A. Shank, Assistant Regional Director, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division.

35. **Consultant's Recommendations.** Respondent Arlington will adopt, as soon as practicable, the recommendations of the Consultant in the Consultant's Report. Provided, however, that within thirty (30) days of issuance of the Consultant's Report, Respondent Arlington may advise the Consultant in writing of any recommendation that it considers to be unnecessary, unduly burdensome, or impractical. Respondent Arlington need not adopt any such recommendation at that time, but instead may propose in writing to the Consultant and the Commission staff an alternative policy or procedure designed to achieve the same objective or purpose. Respondent Arlington and the Consultant will engage in good faith negotiations in an effort to reach agreement on any recommendations objected to by Respondent Arlington. In the event that the Consultant and Respondent Arlington are unable to agree on an alternative proposal within thirty (30) days, Respondent Arlington will abide by the determinations of the Consultant.

36. **Recordkeeping.** Respondent Arlington shall preserve for a period of not less than six (6) years from the end of its last fiscal year prior to the entry of this Order, the first two (2) years in an easily accessible place, any record of Respondent Arlington's compliance with the undertakings set forth in this Order.

37. **Notice to Advisory Clients.** Within thirty (30) days of the entry of this Order, Respondent Arlington shall post prominently on its principal website a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. Respondent Arlington shall maintain the posting and hyperlink on its website for a period of six (6) months from the entry of this Order. Within thirty (30) days of the entry of this Order, Respondent Arlington shall mail to each of its existing advisory clients as of the entry of this Order a copy of the Form ADV brochure which incorporates the paragraphs contained in Section III of this Order, and which specifies that a link to the Order will be posted on Arlington's principal website. Furthermore, for a period of six (6) months from the entry of this Order, to the extent that Respondent Arlington is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 under the Advisers Act, Respondent Arlington shall incorporate in the brochure the paragraphs contained in Section III of this Order.

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

39. **Certification of Compliance by Respondent Arlington.** Respondent Arlington shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Jeffrey A. Shank, Assistant Regional Director, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

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 Advisers Act, it is hereby ORDERED that:

A. Respondents Arlington and LoPresti cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 promulgated thereunder.

B. Respondents Arlington and LoPresti are censured.

C. Respondents Arlington and LoPresti shall each pay a civil money penalty as follows:

(1). Respondent Arlington shall pay a civil penalty of \$125,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (“Exchange Act”). Payment shall be made in the following installments:

- a. \$75,000 prior to, or no later than ten (10) days after, the date of this Order;
- b. \$25,000 prior to or no later than ninety (90) days after the date of this Order; and
- c. \$25,000 prior to or no later than one hundred eighty (180) days after the date of this order.

(2). Respondent LoPresti shall pay a civil money penalty in the amount of \$75,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments:

- a. \$25,000 prior to, or no later than ten (10) days after, the date of this Order;
- b. \$25,000 prior to or no later than ninety (90) days after the date of this Order; and
- c. \$25,000 prior to or no later than one hundred eighty (180) days after the date of this order.

(3). Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post judgment interest, which accrues pursuant to 31 U.S.C. § 3717 on any unpaid amounts due after 14 days of the entry of this Order. Prior to making the final payment set forth herein, Respondents shall contact the staff of the Commission for the amount due for the final payment.

(4). If any payment is not made by the date the payment is required by this Order, the entire outstanding balance 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:

- a. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- b. 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
- c. 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 Arlington Capital Management, Inc. or Joseph F. LoPresti 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 Jeffrey A. Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, Illinois 60604.

D. 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 Respondents' 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 Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent Arlington shall comply with its undertakings as enumerated in Paragraphs 34 to 39 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent LoPresti, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent LoPresti 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 Respondent LoPresti 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