

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5489 / April 28, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 33856 / April 28, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19773

In the Matter of

**Semper Capital
Management, L.P.,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, AND 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 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Semper Capital Management, L.P. (“Semper” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purposes 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Advisers Act and 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 Respondent’s Offer, the Commission finds¹ that:

SUMMARY

1. From July 2013 through May 2014 (the “Relevant Period”), Semper caused the overvaluation of certain odd lot positions in securities held by the Semper MBS Total Return Fund (“SEMMX”), a registered open-end investment company, or mutual fund, that primarily invests in residential mortgage backed securities. The overvaluations caused SEMMX’s net asset value (“NAV”) to be overstated during the Relevant Period. In addition, Semper should have disclosed that its valuation practices for odd lot positions in bonds were a material contributor to SEMMX’s reported performance, and thereby omitted important information from certain statements to investors that attributed the fund’s reported performance to investments rising toward fundamental values. Finally, Semper failed to adopt policies and procedures that were reasonably designed to address Semper’s public disclosures concerning the attribution of SEMMX’s reported performance.

2. From its inception on July 22, 2013 through May 31, 2014, SEMMX’s investments consisted almost entirely of odd lot positions (*i.e.*, small-sized pieces)², with a particular focus on non-agency mortgage-backed securities (“NA MBS”). The odd lot purchases were made as part of a strategy to establish a diversified portfolio for SEMMX, which was a new fund. These odd lot positions typically traded at a discount to round lot positions (*i.e.*, institutional, larger-sized pieces) of the same bonds. After Semper purchased odd lot positions for SEMMX, third-party pricing vendors (“Pricing Vendors”) provided prices for the odd lots that reflected pricing appropriate for institutional round lots (“Pricing Vendor Marks”). The Pricing Vendors typically considered a bond with at least \$1 million current face value as an institutional round lot. During the Relevant Period, SEMMX’s performance as reported at the end of the trading day increased as a result of the difference between the purchase price for the odd lot position and the higher Pricing Vendor Mark used to value the position.

3. During the Relevant Period, SEMMX held a substantial number of NA MBS positions that were less than \$1 million in size, which were not accurately valued because of the Pricing Vendor Marks. For these positions, Semper did not have a reasonable basis to believe that the Pricing Vendor Mark accurately reflected the price that SEMMX would receive for these positions in a current sale. Nevertheless, Semper caused the Pricing Vendor Marks to be used for these NA MBS positions that were less than \$1 million in size. As a result, the value of these

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Accordingly, for purposes of the findings in this Order only, positions of less than \$1 million in current face value shall be considered odd lots.

securities was overstated, which caused SEMMX to overstate its current NAV for purposes of distributing, redeeming and repurchasing its shares throughout the Relevant Period.

4. During the Relevant Period, Semper was aware that Pricing Vendor Marks were resulting in mark-ups to the prices of SEMMX's odd lot NA MBS positions. However, Semper's policies and procedures failed to provide sufficient oversight for Semper's public disclosures concerning SEMMX's reported performance and how that performance was impacted by the overvaluation of odd lot NA MBS positions.

5. During the Relevant Period, Semper communicated with investors about SEMMX's performance. In SEMMX's 2013 and 2014 annual reports to investors, as well as in a June 26, 2014 question and answer session with investors that was subsequently published on Semper's website, Semper made inaccurate statements about the reasons for SEMMX's reported performance that should have disclosed the impact of Pricing Vendor Marks on SEMMX's odd lot positions, and further failed to disclose that a material portion of SEMMX's reported performance during the Relevant Period was attributable to overvaluation of SEMMX's odd lot NA MBS positions.

RESPONDENT

6. Semper Capital Management, L.P. ("Semper"), a Delaware limited partnership, is an investment adviser registered with the Commission with approximately \$3 billion in assets under management. Semper has been registered with the Commission as an investment adviser since 1992. Semper provides investment advisory services to SEMMX. Semper's principal place of business is New York, New York.

OTHER RELEVANT ENTITY

7. Semper MBS Total Return Fund is an actively managed open-end investment company that was launched by Semper on July 22, 2013. SEMMX offers several share classes for investors, including an institutional share class with the ticker SEMMX (the fund and its share classes will collectively be referred to throughout this Order as SEMMX). As of December 31, 2019, SEMMX had \$2.373 billion assets under management.

FACTS

Background

8. SEMMX is an open-end investment company, or mutual fund, whose July 2013 prospectus stated an intention to invest at least 80% of assets in mortgage backed securities. By May 31, 2014, 75% of SEMMX's holdings comprised NA MBS and, excluding, short-term cash-equivalent holdings, NA MBS made up 93% of SEMMX's assets.

9. NA MBS are asset-backed securities issued by private institutions that are backed by mortgages that are not guaranteed by a government-sponsored entity. During the Relevant Period, NA MBS odd lot positions typically traded at a significant discount to round lot positions in NA MBS. There is no standard definition regarding what constitutes an odd lot position.

However, the Pricing Vendors that SEMMX used to value its NA MBS positions considered having at least \$1 million current face value an institutional round lot size.

10. During the Relevant Period, SEMMX's net assets grew \$68.2 million, and Semper earned \$103,228 in advisory fees for managing SEMMX.

11. During the Relevant Period, a third-party administrator provided daily NAV calculations for SEMMX ("Fund Administrator"). Semper, in turn, published SEMMX's NAV. Semper relied on the Pricing Vendor Marks to value SEMMX's portfolio holdings.

12. The valuation policy of the fund's trust ("Fund Trust"), which governed the pricing of SEMMX's positions, stated, in part, that the fair value of a portfolio security shall be the amount that the Fund Administrator and the fund's board of directors, acting in good faith, determines that the owner of the security might reasonably expect to receive upon its "current sale."³ The fund's board of directors was ultimately responsible for pricing decisions. However, the fund's board delegated most valuation decisions to a valuation committee that included officers of the Fund Administrator. Semper was responsible for providing "input" to the valuation committee as it valued SEMMX's positions. Under the valuation policy, Semper had the ability to question a pricing determination made by the valuation committee and propose an alternative price or pricing methodology.

Semper's Valuation of Odd Lot Bond Positions Purchased for SEMMX

13. When Semper purchased a bond for SEMMX's portfolio, Semper reported this purchase to the Fund Administrator, as well as relevant details such as the purchase size, the name of the bond, and other identifying information. For purposes of SEMMX's NAV calculation, the day one purchase price of the bond was incorporated into SEMMX's NAV. Typically, SEMMX's NAV reflected the newly purchased bond as valued at its cost, or purchase price. Subsequent to the bond's purchase, the Fund Administrator submitted the relevant identifying information about the purchased bond to one or more third-party Pricing Vendors, which in turn provided prices for the purchased bond.

14. When Semper purchased odd lot bond positions for SEMMX, the Pricing Vendors routinely provided prices for these bonds that were higher than the prices at which Semper had just purchased the bonds. For example on October 16, 2013, Semper purchased a NA MBS with a current face amount of \$222,634 at a price of 63.375. From October 16 to 17, SEMMX held the newly purchased bond at its purchase price valuation. On October 18, Semper recommended that the Fund Administrator price this bond using a Pricing Vendor Mark, which was 68.3473.⁴ As a result, SEMMX's performance immediately improved because of this valuation mark up of

³ In determining SEMMX's current NAV, the Fund Administrator acted in accordance with a valuation policy that stated that the valuation of the fund's holdings would be consistent with the requirements of the Investment Company Act of 1940 and the rules thereunder, and would be informed by guidance provided by, among other authorities, the Commission and the Financial Accounting Standards Board ("FASB").

⁴ Typically there was a day or two gap in time between the purchase of an odd lot position and when it was marked by a Pricing Vendor. In this interim period, SEMMX typically valued the newly purchased positions at their purchase prices.

7.85% on the position. Likewise, on November 5, 2013, Semper purchased an NA MBS with a current face amount of \$289,614 at a price of 59.75. On November 6, 2013, the Pricing Vendor marked this bond for SEMMX at 63.6, or a 6.44% mark-up.

15. Overall, from July 22, 2013 to May 31, 2014, SEMMX's reported performance benefited from Pricing Vendors' mark-ups of 126 odd lot bond positions to round lot prices. On average, the Pricing Vendors increased the valuation of each marked up odd lot position by 3.5% over its purchase price.

16. Before the Fund Administrator incorporated a bond price from a Pricing Vendor for a newly purchased bond, the Fund Administrator submitted the Pricing Vendor Marks for Semper's review. Per applicable procedures, if Semper believed that the bond price from the Pricing Vendor was "not reflective of the present market value of the security," Semper could issue a "Price Challenge," which either Semper or the Fund Administrator then submitted to the Pricing Vendor. In response to such a Price Challenge, the Pricing Vendors could report back that the bond's price would stay the same, increase, or decrease. Semper then was in a position to make a recommendation to the fund's valuation committee on whether this newly provided price was "not reflective of the present market value of the security." In sum, under the applicable procedures, Semper had a responsibility for informing the Fund Administrator whether the Pricing Vendor Marks for SEMMX's odd lot bond positions reflected present market value, both before and after the Pricing Vendors received a Price Challenge.

17. When Semper issued Price Challenges to Pricing Vendor Marks, the Pricing Vendors regularly responded by informing Semper and the Fund Administrator that the bond prices provided by the Pricing Vendors were for round lot bond sizes, not odd lot bond sizes. As a result, when the Pricing Vendors provided prices in response to Semper's Price Challenges, the Pricing Vendor Marks frequently stayed the same as before Semper issued its Price Challenge. Semper therefore should have understood that Pricing Vendor Marks were typically priced at a premium to the price of the odd lot bond positions that Semper had purchased and that the Pricing Vendor Marks were not reflective of the present market value of odd lot bond positions.

18. Despite knowing that the Pricing Vendor Marks were "not reflective of the present market value of the security," Semper failed to follow applicable procedures and further challenge the Fund Administrator's use of the inflated prices for SEMMX's odd lot bond positions. Nor did Semper take sufficient additional steps to seek out an alternative pricing source that would attempt to provide a fair market value for odd lot bond positions or further validate in a systematic manner the Pricing Vendor Marks. Because of Semper's agreement to the use of the Pricing Vendors' higher round lot pricing for SEMMX's odd lot bond position purchases, SEMMX's NAV was overstated.

**SEMMX's Odd Lot Purchases Caused SEMMX's Portfolio to Be Overvalued
and SEMMX's Fund Share Prices Were Therefore Not Based on the Fund's Current Net
Asset Value**

19. Rule 22c-1 under the Investment Company Act prohibits registered investment companies, among others, from selling, redeeming, or repurchasing any of the investment

company's redeemable securities except at a price based on the current NAV of such security. Rule 2a-4 under the Investment Company Act defines "current NAV" for use in computing the current price of redeemable securities issued by registered investment companies. Under Section 2(a)(41)(B) of and Rule 2a-4 under the Investment Company Act, registered investment companies must value their portfolio assets by using (1) market values for securities with readily available market quotations; and (2) fair value for all other portfolio assets, as determined in good faith by the board of directors. The valuation policy of the Fund Trust indicated that the fair value of securities for which market quotations are not readily available is the amount the fund would reasonably expect to receive for the securities in a current sale.

20. Because SEMMX's odd lot positions in bonds were typically valued at round lot prices, SEMMX's NAV was improperly inflated during the Relevant Period. During the Relevant Period, SEMMX's NAV was improperly inflated by more than \$0.01, as a result of certain odd lot NA MBS positions being valued at round lot prices. For example on October 16, 2013, Semper purchased an odd lot NA MBS at a price of 81.375. When the pricing of this bond was updated to reflect the Pricing Vendor Mark of 91.6109, SEMMX's NAV increased by \$0.0465.

21. While, depending on the circumstances, it is not necessarily improper to value an odd lot position at a Pricing Vendor Mark,⁵ Semper did not conduct a sufficient contemporaneous review or analysis to determine if pricing SEMMX's odd lot NA MBS positions at or near the Pricing Vendor Marks represented the fair value of SEMMX's odd lot NA MBS positions. This was despite the fact that the Pricing Vendor Marks were, on average, 3.5% higher than the purchase prices for odd lot NA MBS positions that were subsequently marked up, and, generally, Semper did not have a reasonable basis to believe SEMMX could currently sell these odd lot NA MBS positions as part of a round lot. Nonetheless, SEMMX's odd lot positions were often marked at round lot prices provided by the Pricing Vendors when their prices were first moved from their purchase prices.

22. Using the Pricing Vendor Marks to value SEMMX's odd lot NA MBS positions positively impacted SEMMX's NAV up to \$0.49 per share during the Relevant Period, when SEMMX's daily reported NAV ranged from approximately \$9.91 to \$11.03 per share. Thus, by using the Pricing Vendor Marks without a basis that the securities could be sold at those values, SEMMX overvalued its portfolio and, consequently, sold its shares at prices that were not based on their current NAV.

23. From July 22, 2013 to November 30, 2013, 58 percent of SEMMX's reported inception-to-date investor returns were attributable to markups of the prices of odd lot positions to round lot prices. SEMMX's first annual report filed with the SEC reported performance as of November 30, 2013.

24. From July 22, 2013 to May 31, 2014, 32 percent of SEMMX's reported inception-to-date investor returns were attributable to markups of odd lot positions to round lot prices. SEMMX's first semi-annual report filed with the SEC reported performance as of May 31, 2014.

⁵ *Money Market Fund Reform; Amendments to Form PF*, Securities Act Rel. No. 9616 (July 23, 2014) at 285-88 (providing guidance regarding the use of pricing services).

**Semper Made Misleading Disclosures to Investors
about SEMMX's Initial Performance**

25. Semper made inaccurate statements about the sources of SEMMX's reported performance in two annual reports to shareholders, and during a call with investors on June 26, 2014, by failing to disclose that its valuation practices for odd lot bond positions were a material contributor to SEMMX's reported performance.

26. In its first annual report, SEMMX reported performance that significantly exceeded the fund's benchmark index, the Barclays Capital U.S. MBS Index ("Barclays MBS Index"). As of November 30, 2013, SEMMX's institutional share class returned 8.35% compared to the benchmark's return of 0.99%. In Semper's semi-annual report, with performance reported as of May 31, 2014, SEMMX again substantially outperformed the benchmark. For the six months prior, Semper reported a 5.46% return for SEMMX's institutional share class. According to a "Fund Fact Sheet" distributed to investors, from inception to May 31, 2014, SEMMX had returned 14.26%, while the fund's benchmark had only returned 4.29%. As Semper explained, the fund had an "Excess Return" above its benchmark of 9.97%. By its second annual report, as of November 30, 2014, Semper reported a 13.16% return since the fund's inception, compared to a 4.71% return for the fund's benchmark.

27. In SEMMX's first annual report to shareholders, dated November 30, 2013 and filed February 7, 2014, Semper addressed a letter to SEMMX's shareholders that explained SEMMX's performance since the inception of the fund. In the January 10, 2014 letter, Semper informed investors that the fund's performance was attributable, in part, to the fact that "we were able to buy attractively priced securities, primarily in the Non-Agency RMBS sector, which subsequently began to rise towards fundamental values during the autumn season." Semper also detailed additional contributors to the fund's performance to date, including the structure of the NA MBS market, which was "opaque, diverse, and requires credit intensive analysis" of "tens of thousands of securities, many of which are small and not closely monitored by a large number of institutional investors." Semper explained that "[b]y being in a position to purchase smaller positions to achieve the desired Fund diversification, we were in many cases able to purchase securities at even more attractive levels than might otherwise be available." In its first annual report's letter to SEMMX's shareholders, Semper failed to disclose that a substantial portion of the fund's reported performance was attributable to SEMMX's valuing odd lot bond positions at Pricing Vendor Marks. Semper misleadingly attributed the fund's performance to a number of reasons without explaining that its valuation practices for odd lot bond positions were a material factor in the fund's reported performance.

28. On June 26, 2014, Semper hosted a public question and answer session with investors in SEMMX, and Semper then published the transcript of this call on its website. During the call, Semper described primary factors in SEMMX's performance since inception including the "fragmentation," "continued inefficiency" and "complexity" of the mortgage backed securities market, the "skill set" and "intellectual value add" of SEMMX's portfolio managers, and the "nimble and opportunistic" approach to investing that Semper employed when investing on behalf of SEMMX. Semper also explained that SEMMX's investments had taken place at an

opportune time in the bond markets, and that the fall of 2013 “was a great time for us to start [the] fund in the momentum we gained and then has frankly continued.” Semper also noted that SEMMX offered “investors an exciting way to invest in the housing recovery which is continuing....” Finally, Semper stated that SEMMX’s target investments in residential and commercial mortgage backed securities had “continued to grind higher in price and spreads have continued to contract” as “very strong improvements in credit fundamentals [are] leading to cash flow quality increases.” At no time during the call did Semper explain that its valuation practices for odd lot bond positions were a material contributor to SEMMX’s reported performance.

29. In SEMMX’s second annual report to shareholders, dated November 30, 2014 and filed February 9, 2015, Semper again addressed a letter to SEMMX’s shareholders that explained SEMMX’s performance as of November 30, 2014. In the January 7, 2015 letter, Semper attributed SEMMX’s performance to several factors, including improvement in the “overall fundamental strength of the MBS market” and the fund’s allocation to residential mortgage backed securities, which benefited from “continued strengthening of the residential real estate market and domestic economy....” However, Semper failed to disclose that a material portion of the fund’s reported performance was attributable to SEMMX’s valuation practices for odd lot bond positions.

Semper’s Policies and Procedures Failed to Address How to Disclose Potential Mismarking of Odd Lot Bond Positions

30. Semper’s “Supervisory Procedures and Compliance Manual,” (“Compliance Manual”) dated October 23, 2013, did not include policies and procedures related to the discussion of SEMMX’s investment performance in annual reports filed with the Commission. The Compliance Manual did not address how Semper should incorporate information about relevant pricing and valuation considerations in public disclosures regarding SEMMX’s performance, nor did the Compliance Manual specify any roles or responsibilities for Semper personnel in connection with ascertaining the validity of public statements by Semper concerning performance attribution. Therefore, Semper’s disclosure policies and procedures were not reasonably designed to prevent inaccurate statements like these from being made about the sources of fund performance in SEMMX’s annual reports or on calls with investors.

31. Semper has taken a number of steps to improve its supervisory procedures and compliance efforts, including the retention of additional compliance and legal personnel, substantial revisions to its Compliance Manual with respect to the creation and review of public disclosures, and the institution of new policies and procedures for the documentation of Price Challenges, and new policies and procedures for coordinating with SEMMX’s Fund Administrator on such challenges. Semper has also bolstered its operations to ensure the creation and review of daily reports on the impact on SEMMX’s NAV from changing bond prices and a position by position analysis of SEMMX’s bonds’ price movements.

VIOLATIONS

32. As a result of the conduct described above, Semper willfully⁶ violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules. Negligence is sufficient to establish a violation of Section 206(4) and Rule 206(4)-7. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). Semper failed to adopt and implement policies and procedures to address how Semper personnel responsible for making disclosures to investors should consider whether significant and unusual sources of performance like execution should be disclosed. As such, Semper’s disclosures policies and procedures were not reasonably designed to prevent inaccurate statements from being made about the source of fund performance.

33. As a result of the conduct described above, Semper willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of material fact or omit to state 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 otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. Specifically, in publicly stating during an investor question and answer session from June 26, 2014, and then posting those statements on Semper’s website, and distributing to shareholders of SEMMX the Annual Report filed with the Commission by the Fund’s Trust for the periods ended November 30, 2013, and November 30, 2014, Semper made misleading statements of material fact about the sources of SEMMX’s reported performance to investors and prospective investors in a pooled investment vehicle.

34. As a result of the conduct described above, Semper willfully violated Section 34(b) of the Investment Company Act, because it was responsible for the inclusion of untrue statements of material fact in a registration statement, application, report, account, record or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein, facts necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading. Specifically, in preparing the Letters to Shareholders included in the Annual Reports filed with the Commission by the Fund’s Trust for the periods ended November 30, 2013 and November 30, 2014, Semper made misleading statements of material fact about the factors that materially affected SEMMX’s reported performance.

⁶ “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act, “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

35. As a result of the conduct described above, SEMMX violated Rule 22c-1 under the Investment Company Act which prohibits registered investment companies, among others, from the sale, redemption, or repurchase of the investment company's redeemable securities except at a price based on the current net asset value of such security. Specifically, SEMMX overstated its NAV and executed transactions in redeemable securities at prices not based on current net asset values throughout the Relevant Period. Semper caused these violations.

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent shall 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)-7 and 206(4)-8 thereunder and Section 34(b) of the Investment Company Act and Rule 22c-1 thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement of \$103,228 and prejudgment interest of \$25,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$32,057 paid within 10 days of the entry of this Order, \$32,057 paid within 120 days of the entry of this Order; \$32,057 paid within 240 days of the entry of this Order, and \$32,057 within 350 days of the entry of this Order. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondent shall pay a civil monetary penalty in the amount of \$375,000 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: \$93,750 paid within 10 days of the entry of this Order, \$93,750 paid within 120 days of the entry of this Order; \$93,750 paid within 240 days of the entry of this Order, and \$93,750 within 350 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) 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 Semper as Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Adam S. Aderton, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington, D.C., 20549.

E. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it 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, Respondent agrees that it 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.

By the Commission.

Vanessa A. Countryman
Secretary