UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6251 / February 27, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21313

In the Matter of **HUNTLEIGH ADVISORS, INC. and DATATEX INVESTMENT SERVICES, INC.;** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) 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 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") against Huntleigh Advisors, Inc. ("Huntleigh") and Datatex Investment Services, Inc. ("Datatex," together with Huntleigh, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) 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 Respondents' Offer, the Commission finds that:

Summary

1. Respondents Huntleigh and Datatex, both registered investment advisers affiliated by common ownership, breached their fiduciary duty to advisory clients in connection with compensation that Huntleigh and Respondents' affiliated broker-dealer received as a result of the advisory clients' investments. From at least September 2015 through 2022 (the "Relevant Period"), Respondents failed to provide full and fair disclosure regarding their conflicts of interest associated with: (a) compensation Huntleigh received based on client transaction fees; (b) revenue Huntleigh and Respondents' affiliated broker-dealer Huntleigh Securities Corp. ("HSC") received in connection with advisory client cash sweep accounts; and (c) HSC's receipt of fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees") from clients' investments in certain mutual fund share classes, including when lower-cost, non fee-paying share classes were also available. Respondents, although eligible to do so, did not self-report to the Commission, pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative.[1] Huntleigh further failed to provide full and fair disclosure regarding its conflicts of interest associated with revenue HSC and Huntleigh received based on the rate of margin interest charged to advisory clients.

2. Respondents also breached their duty of care, including their duty to seek best execution, by: (a) failing to evaluate whether Huntleigh's receipt of advisory client transaction fees from HSC, impacted the reasonableness of the fees HSC charged the advisory clients or whether Huntleigh clients were receiving best execution; (b) failing to periodically evaluate whether the default sweep account was the best option for their clients; and (c) recommending clients invest in share classes of mutual funds that paid 12b-1 fees and failing to evaluate whether continuing to hold such share classes best served their clients' interests when share classes of the same funds were available to the clients that presented a more favorable value for these clients based on their particular circumstances.

3. In addition, Respondents failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with disclosure of their conflicts of interest, best execution, and mutual fund share class selection.

Respondents

4. Huntleigh, incorporated in Missouri and headquartered in St. Louis, Missouri, has been registered with the Commission as an investment adviser since 2004. In its Form ADV dated

[1] *See* Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Share Class Selection Disclosure Initiative, https://www.sec.gov/enforce/announcement/scsd-initiative (last modified Feb. 12, 2018).

March 28, 2022, Huntleigh reported that it had approximately $486 million in regulatory assets under management.

5. Datatex, incorporated in Missouri and headquartered in St. Louis, Missouri, has been registered with the Commission as an investment adviser since 1988. In its Form ADV dated March 28, 2022, Datatex reported that it had approximately $38.99 million in regulatory assets under management. Datatex is registered as a related adviser under Rule 203A-2(b) based on its affiliation with Huntleigh.

Related Entity

6. HSC, incorporated in Missouri and headquartered in St. Louis, Missouri, has been registered with the Commission as a broker-dealer since 1977. HSC shares common ownership, management, and employees with Huntleigh and Datatex, and is under common control with Huntleigh and Datatex. HSC, Huntleigh, and Datatex employ representatives that are registered representatives of HSC as well as investment adviser representatives ("IARs") of Huntleigh and Datatex.

Background

7. Respondents provide investment advisory services primarily on a discretionary basis to individuals, but also to organizations. During the Relevant Period, Respondents primarily used HSC as an introducing broker-dealer for their advised accounts, and HSC cleared through an unaffiliated clearing broker ("Clearing Broker") pursuant to a Fully Disclosed Clearing Agreement ("Clearing Agreement").

8. During the Relevant Period, a portion of Datatex's advisory client accounts were sub-advised by Huntleigh ("Sub-Advised Accounts"). As sub-adviser for these accounts, Huntleigh was responsible for selecting investments and placing trades for the accounts.

9. HSC, Huntleigh, and Datatex shared office space, officers, employees, and representatives, and thus many of their business expenses were shared. HSC and Huntleigh entered into two Expense Co-Sharing Agreements ("Expense Agreements"), one in June 2015 and another in August 2019, under which HSC and Huntleigh allocated certain business expenses between the firms.

Transaction Fees

10. The Clearing Agreement between HSC and Clearing Broker set forth, among other things, a pricing schedule that detailed the fees HSC paid the Clearing Broker for providing execution, clearing, and custody for HSC's brokerage customers, including the advisory clients of Respondents. In September 2015, the Clearing Broker charged HSC a per-trade clearing fee that varied based on the asset traded as well as a $1.00 per trade confirm handling fee. The Clearing Agreement also allowed HSC to instruct the Clearing Broker to charge the brokerage customers

(including Respondents' advisory clients) a "transaction fee," most of which the Clearing Broker would pay to HSC.

11. Throughout the Relevant Period, Respondents represented to clients in their Forms ADV Part 2A ("Brochures") that clients would be responsible for certain fees and expenses charged by custodians and imposed by broker-dealers including, but not limited to, transaction fees, but that the adviser would be responsible for paying execution and clearing charges to the Clearing Broker. Huntleigh's advisory agreement reiterated that Huntleigh would pay execution and clearing charges, but Datatex's advisory agreement contradicted Datatex's Brochure and stated that the clients may pay these charges. Respondents' disclosures did not explain what a "transaction fee" was as opposed to execution and clearing charges, or when clients would be responsible for transaction fees. Further, Respondents did not disclose that it was their affiliate, HSC, that determined the amount of such transaction fees, or that Respondents financially benefited. For the Sub-Advised Accounts, Huntleigh paid the execution and clearing charges instead of Datatex. From at least September 2015 through mid-September 2018, Huntleigh paid HSC per-trade clearing and execution fees generally between $7.25 and $13.00, depending on the investment product. HSC then remitted these payments to the Clearing Broker.

12. During the Relevant Period, the Clearing Broker, at HSC's instruction pursuant to the Clearing Agreement, typically charged a $5.75 transaction fee to brokerage customers, including Respondents' advisory clients. HSC used $1.00 of each transaction fee to pay the confirm handling fee that HSC owed under the Clearing Agreement and credited the remaining $4.75 to HSC's account. HSC then credited the $4.75 from the client transaction fees to Huntleigh pursuant to the Expense Agreements, which reduced the net cost to Huntleigh when its clients and the Sub-Advised Accounts executed trades. Huntleigh recorded the credits as revenue.

13. In September 2018, HSC instructed the Clearing Broker to increase the client transaction fee by one dollar to $6.75 based on HSC's belief that the transaction fees charged by HSC were below industry standards. HSC passed this additional revenue on to Huntleigh by increasing Huntleigh's corresponding credit pursuant to the Expense Agreements by one dollar to $5.75. The Clearing Broker's clearing and execution fees, however, remained the same. Respondents failed to evaluate whether they were continuing to obtain best execution for clients in light of the increase.

14. In October 2019, the Clearing Broker eliminated the $1.00 confirm handling fee it charged HSC out of each transaction fee, and HSC began crediting the entire $6.75 client transaction fee to Huntleigh.

15. As investment advisers, Respondents were obligated to disclose all material facts to their advisory clients, including any conflicts of interest between themselves and their clients that could affect to the advisory relationship. To meet this fiduciary obligation, Respondents were required to provide their clients with full and fair disclosure that was sufficiently specific so that the clients could understand the conflicts of interest concerning Respondents' advice and have an informed basis on which to consent to or reject the conflicts.

16. Huntleigh's and Datatex's disclosures were inadequate and misleading. None of the Respondents' disclosures to clients explained what a "transaction fee" was as opposed to execution and clearing charges, or when clients would be responsible for transaction fees. Respondents did not disclose that it was their affiliate, HSC, that decided to impose the transaction fee and the amount of the fee. Respondents also did not disclose to their clients that Huntleigh and HSC entered into Expense Agreements, that Huntleigh received credits derived from the transaction fees that Respondents' clients paid, or the associated conflicts of interest resulting from Huntleigh receiving revenue related to client trades. To the contrary, Huntleigh disclosed that "[a]pproximately 100% of [Respondents'] revenue is generated from advisory fees" and that they "disclose to clients the existence of all material conflicts of interest, including the potential for our firm and our employees to earn compensation from advisory clients in addition to our firm's advisory fees."

17. Respondents' fiduciary duty also includes, among other things, a duty of care. To fulfill this obligation, an adviser, among other things, must provide investment advice in the best interest of its client based on the client's objectives and seek best execution for client transactions.[2]

18. Respondents violated their duty to seek best execution on behalf of their clients by placing client transactions with HSC without evaluating whether HSC's transaction fees were reasonable in light of Huntleigh's arrangement with HSC to credit most of the fees to Huntleigh. Respondents also failed to reevaluate whether their clients were receiving best execution when: (a) HSC decided to increase the transaction fees in September 2018 and credit those additional fees to Huntleigh, and when (b) HSC decided to maintain the $6.75 transaction fee in October 2019 despite a $1.00 per trade reduction in fees charged by the Clearing Broker, instead passing the cost savings on to Huntleigh in the form of increased credits rather than reducing what clients paid.

Cash Sweep Revenue Sharing

19. When Respondents' clients opened an HSC brokerage account, Respondents or the clients selected a cash sweep vehicle into which uninvested cash balances would be directed (the "Sweep Account"). A Sweep Account is used by broker-dealers to hold cash (e.g., incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money.

20. During the Relevant Period, the Clearing Broker offered certain Sweep Account options. The Sweep Accounts varied by type of vehicle (money market fund or FDIC-insured bank deposit account). For some Sweep Accounts, the Clearing Broker agreed to pay a portion of any revenue it received from the Sweep Account sponsor to financial firms whose clients or customers used the Sweep Account. For other Sweep Accounts, the Clearing Broker did not pay any revenue sharing.

21. During the Relevant Period, Respondents used FDIC-insured bank deposit accounts (the "Deposit Accounts") as the default Sweep Account for Huntleigh's advisory clients and the

[2] *See, e.g.*, Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

Sub-Advised Accounts. Pursuant to the Clearing Agreement, the Clearing Broker made variable monthly payments to HSC of up to an annual rate of 0.70% of the aggregate assets Respondents' clients held in the Deposit Accounts. From September 2015 through August 2019, HSC credited this revenue to Huntleigh pursuant to the June 2015 Expense Agreement.

22. Respondents failed to disclose to clients, in their Forms ADV or otherwise, HSC's receipt of cash sweep revenue sharing payments, Huntleigh's receipt of credits from HSC for these payments, or the attendant conflicts of interest, including that Respondents recommended Sweep Account options that yielded revenue sharing over other options that did not result in revenue sharing.

23. HSC provided to clients a document prepared by the Clearing Broker about the Clearing Broker's cash sweep program. This document described the revenue sharing program and the introducing firm's interest in the various Sweep Account options. This document did not make clear that the introducing firm was HSC, did not address that Respondents as the clients' advisers had a conflict of interest, and did not disclose that Huntleigh was profiting from the relationship.

24. Respondents also violated their duty of care by failing to periodically evaluate whether the default Deposit Accounts were the best options for their clients based on their objectives or whether other options that did not yield revenue for HSC and Huntleigh, and at times offered higher yields, were in clients' best interests. Pursuant to their advisory agreements, Respondents agreed to provide "continuous investment management" for clients in accordance with (a) the clients' objectives and express written guidelines, and (b) the Respondents' investment strategy as set forth in the Respondents' Brochures, including investing and re-investing assets, and therefore had an obligation to evaluate whether remaining in the Deposit Accounts continued to be in the clients' best interest.

Mutual Fund Share Class Selection

25. Mutual funds typically offer investors different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

26. For example, some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund's total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund's assets on an ongoing basis and paid to the fund's distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

27. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")).[3] An investor who holds

[3] Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as "Class F2," "Class Y," and "Class Z" shares. As used in this Order, the term "Class I shares" refers generically to share classes that do not charge 12b-1 fees.

Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time—and thus will generally earn higher returns—than one who holds a share class of the same fund that charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

28. During the Relevant Period, Respondents advised clients to purchase or hold[4] mutual fund share classes that charged 12b-1 fees, including when lower-cost share classes of those same funds were available to those clients. These 12b-1 fees were paid to HSC, which in most cases would not have collected them had Respondents' advisory clients been invested in the available lower-cost share classes.

29. During the Relevant Period, Respondents disclosed in their advisory contracts that they or their affiliates "may directly or indirectly receive Rule 12b-1 distribution fees, which will be in addition to the management fees and normal brokerage fees …." However, Respondents did not disclose either the existence of a conflict of interest or all material facts regarding the conflict of interest that arose when they invested advisory clients in a share class that would generate 12b-1 fee revenue for HSC and/or its registered representatives while a share class of the same fund was available that would not provide HSC with that additional compensation.

30. Respondents also failed to meet their duty of care. First, they failed to seek best execution by causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions. Second, Respondents failed to evaluate whether it was in their clients' best interests to hold 12b-1 fee-paying share classes on a continuing basis, when lower cost share classes of the same fund were available. Pursuant to their advisory agreements, Respondents agreed to provide "continuous investment management" for clients in accordance with (a) the clients' objectives and express written guidelines, and (b) the Respondents' investment strategy as set forth in the Respondents' Brochures, including investing and re-investing assets, and therefore had an obligation to evaluate whether remaining in the Deposit Accounts continued to be in the clients' best interest.

Margin Interest

31. A margin account is a type of account in which a broker lends customers cash, using the brokerage customer's account as collateral, to purchase securities. The broker charges the customer interest on the amount of money loaned by the broker to the investor in the margin account ("Margin Interest").

32. Since at least September 2015, Huntleigh recommended to certain of its advisory clients that they enter into a margin account agreement with HSC and further recommended that certain advisory clients use margin to purchase securities recommended by Huntleigh. The clients

[4] In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

paid Margin Interest on the amount of margin in the account. None of the Sub-Advised Accounts used margin.

33. The Clearing Agreement provided that the Clearing Broker would charge interest to HSC on the margin accounts of HSC's brokerage customers, including those who were also advisory clients of Huntleigh. The Clearing Agreement also provided that HSC may determine the rate of interest the Clearing Broker would charge to HSC customers on the margin balance in the margin accounts, and that HSC would earn the difference between the interest paid by HSC customers and the interest paid by HSC to the Clearing Broker.

34. Since at least September 2015, HSC directed the Clearing Broker to charge Margin Interest in excess of the amount HSC paid to the Clearing Broker, resulting in Huntleigh's advisory clients paying a higher Margin Interest with HSC receiving the additional interest. Depending on the balance in a client's margin account, HSC received as much as two-thirds of the Margin Interest paid by clients. Until August 2019, HSC credited to Huntleigh the revenue that HSC derived from Huntleigh advisory clients' Margin Interest payments pursuant to the June 2015 Expense Agreement. Beginning in September 2019, HSC stopped sharing with Huntleigh the revenue it derived from advisory clients' Margin Interest payments.

35. As a result, both HSC and Huntleigh received revenue on Huntleigh advisory client accounts that they would not have collected had HSC not directed the Clearing Broker to charge additional Margin Interest to advisory clients. The payments HSC received from the Clearing Broker as well as the credits Huntleigh received from HSC each incentivized Huntleigh to recommend margin accounts and to recommend clients buy securities that required the use of margin.

36. Huntleigh did not provide full and fair disclosure to its advisory clients of its conflicts of interest associated with HSC setting the margin interest rate charged to Huntleigh advisory clients. The HSC brokerage account agreement disclosed that margin accounts would charge interest and that the introducing firm (HSC) would set the interest rate. However, Huntleigh failed to disclose its conflicts of interest with respect to margin, including that HSC received a portion of the Margin Interest charged to clients or that it credited that revenue to Huntleigh for a portion of the Relevant Period.

Compliance Deficiencies

37. During the Relevant Period, Respondents failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules

thereunder in connection with (a) disclosure of conflicts of interest, and (b) investment selection, including the selection of cash sweep products and mutual fund share class selection.

Violations

38. As a result of the conduct described above, Respondents Huntleigh and Datatex willfully[5] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of 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. 180,194-95 (1963)).

39. As a result of the conduct described above, Respondents Huntleigh and Datatex willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.[6]

Disgorgement

40. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and does not exceed Respondent Huntleigh's net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

Undertakings

41. Respondents have undertaken to:

a. Within thirty (30) days of the entry of this Order, Respondents shall review and correct as necessary all relevant disclosure documents concerning transaction fees and margin interest charged to their advisory clients, revenue sharing, mutual fund share class selection, and best execution.

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[5] "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[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

[6] Scienter is similarly not required to establish a violation of Section 206(4) of the Advisers Act.

b. Within thirty (30) days of the entry of this Order, Respondents shall evaluate whether existing clients should be moved to a lower-cost share class or fund and move clients as necessary.

c. Within thirty (30) days of the entry of this Order, Respondents shall evaluate, update (if necessary), and review for the effectiveness of their implementation, their policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with (i) the disclosure of conflicts of interest; and (ii) investment selection, including the selection of cash sweep products and mutual fund share class selection.

d. Within thirty (30) days of the entry of this Order, Respondents shall notify affected investors (i.e., those former and current clients who were financially harmed by the practices detailed above (hereinafter, "Affected Advisory Clients")) of the settlement terms of this Order by sending a copy of this Order to each Affected Advisory Client via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

e. Within forty (40) days of the entry of this Order, Respondents shall certify, in writing, compliance with the undertaking(s) set forth in paragraphs 41.a through 41.d 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings set forth in paragraphs 41.a through 41.e above. 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 the last day.

IV.

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

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

A. Respondents Huntleigh and Datatex shall 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 Rule 206(4)-7 promulgated thereunder.

B. Respondents Huntleigh and Datatex are censured.

C. Respondents shall pay disgorgement, prejudgment interest, and a civil penalty, totaling $893,502 as follows:

(i) Respondent Huntleigh shall pay disgorgement of $608,251 and prejudgment interest of $105,251, consistent with the provisions of this Subsection C.

(ii) Respondent Huntleigh shall pay a civil penalty of $130,000, consistent with the provisions of this Subsection C.

(iii) Respondent Datatex shall pay a civil penalty of $50,000, consistent with the provisions of this Subsection C.

(iv) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest paid by Huntleigh and Datatex described above for distribution to affected investors (i.e., those former and current clients who were financially harmed by the practices detailed above (hereinafter, "Affected Advisory Clients")). 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.

(v) Within ten (10) days of the entry of this Order, Huntleigh shall deposit $843,502 and Datatex shall deposit $50,000 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(vi) Huntleigh shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Huntleigh and shall not be paid out of the Fair Fund.

(vii) Huntleigh shall distribute from the Fair Fund an amount based on the financial harm to the Affected Advisory Clients during the Relevant Period by the practices discussed above, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold that is approved by the Commission staff. No portion of the Fair Fund shall be paid to any Affected Advisory Client account in which Respondents, or any of their current or former officers, directors, or IARs has a financial interest.

(viii) Huntleigh shall, within ninety (90) days of the entry of this Order, submit the Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Huntleigh shall make itself available, and shall require any third parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Huntleigh also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Huntleigh's proposed Calculation or any of its information or supporting documentation, Huntleigh shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Huntleigh of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(ix) Huntleigh shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each Affected Advisory Client. The Payment File should identify, at a minimum: (1) the name of each Affected Advisory Client; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid, if applicable. Huntleigh shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(x) Huntleigh shall disburse all amounts payable to Affected Advisory Clients within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in paragraph (xiv) of this Subsection C. Huntleigh shall notify the Commission staff of the date[s] and the amounts paid in the distribution.

(xi) If Huntleigh is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an Affected Advisory Client or a beneficial owner of an Affected Advisory Client's account or any other factors beyond Huntleigh's control, Huntleigh shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in paragraph (xiii) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Huntleigh may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Huntleigh 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) Huntleigh 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 the payor 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 Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

(xii) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondents agree to be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding payments to Affected Advisory Clients, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act. Respondents may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.

(xiii) Within one hundred fifty (150) days after Huntleigh completes the disbursement of all amounts payable to Affected Advisory Clients, Huntleigh shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. Huntleigh shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred or credited to each Affected Advisory Client; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Huntleigh has made payments from the Fair Fund to Affected Advisory Clients in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondents and the file number of these proceedings to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiv) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondents shall comply with the undertakings enumerated in Section III, paragraphs 41.a through 41.e above.

By the Commission.

Vanessa A. Countryman
Secretary