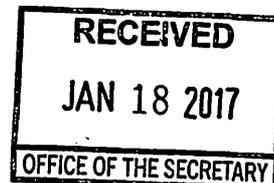


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



INVESTMENT ADVISERS ACT OF 1940
Release No. 4591 / December 20, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32397 / December 20, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17740

In the Matter of

**AUGUSTINE CAPITAL
MANAGEMENT, LLC
(F/K/A AUGUSTINE CAPITAL
MANAGEMENT, INC.), JOHN T.
PORTER, AND
THOMAS F. DUSZYNSKI, CPA,**

Respondents.

**ANSWER OF RESPONDENTS AUGUSTINE
CAPITAL MANAGEMENT, LLC, JOHN T.
PORTER, AND THOMAS F. DUSZYNSKI,
CPA TO THE ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS AND
NOTICE OF HEARING.**

I.

Pursuant to Rule 220 of the Securities and Exchange Commission's (hereinafter, the "Commission") Rules of Practice and the Order issued by the Commission requiring Respondents Augustine Capital Management, LLC (f/k/a Augustine Capital Management, Inc.) ("ACM"), John T. Porter ("J. Porter") and Thomas F. Duszynski, CPA ("Duszynski") (collectively, ACM, J. Porter and Duszynski are referred to herein as the "Respondents") to answer the allegations as set forth in the Order Instituting Administrative Proceedings ("OIP") and Notice of Hearing Pursuant to Sections 203(e), 203(f), and 203(k) of The Investment Advisers Act of 1940 and Section 9(b) of The Investment Company Act Of 1940, Respondents state as follows:

II.

1. Respondents J. Porter and Duszynski, together with Brian D. Porter, own Respondent Augustine Capital Management, LLC. ACM, in turn, acts as an investment adviser for Augustine Fund, L.P. (the “Fund”), a private fund.

RESPONSE: Respondents admit J. Porter, Duszynski, and Brian D. Porter own Respondent Augustine Capital Management, LLC. Respondents deny all remaining allegations in Paragraph 1.

2. Respondents caused the Fund to engage in conflicted transactions without disclosure to, or the consent of, the Fund’s investors. Such consent was needed because the investment adviser had a conflict of interest and therefore could not give meaningful consent on behalf of the Fund. Respondents invested in and lent money to two entities in which the ACM owners had an interest. Respondents also lent an ACM owner, Duszynski, money to fund his investment in a business venture with other ACM owners. When the venture failed, Duszynski defaulted on the loan and saddled the Fund and its investors with the resulting losses.

RESPONSE: Respondents deny the allegations contained in Paragraph 2. Further answering, the documents governing the operation of the Fund, which were given to investors, informed investors about conflict of interest transactions and granted Respondents with the discretion and authority to make all investments for the Fund.

3. Respondents collected nearly \$1 million in investor funds by charging the Fund for ACM’s expenses. These expenses, which under the investment documentation provided to investors were to be borne by ACM, included virtually all of ACM’s overhead expenses – including the salaries of ACM employees. Additionally, even though J. Porter and Duszynski

were themselves investors in the Fund, they exempted themselves and certain of their relatives who were investors in the Fund from paying their *pro rata* shares of the salaries of ACM employees.

RESPONSE: Respondents deny the allegations contained in Paragraph 3. Further answering, the documents governing the operation of the Fund, which were given to investors, provided for the Fund to pay all of the expenses incurred in the ordinary course of its business.

4. The offering documentation ACM gave to investors provided that classes would be formed and that an investor's holdings in the Fund would be based upon when the investor made an investment in the Fund. In practice, however, Respondents unilaterally determined which investments were allocated to which investors, and how much cash was allocated to each investor's account. Respondents thereafter periodically reallocated various investors' holdings. Respondents improperly kept investors in the dark about what investments were allocated to them, and why.

RESPONSE: Respondents deny the Division of Enforcement's ("Division") mischaracterization of the offering documentation given to investors and refer to that documentation for a true, correct, and complete description of its terms. Respondents further deny the allegations in Paragraph 4.

5. Respondents provided investors with account statements that did not accurately reflect the market value of the underlying investments. Respondents privately concluded that one of the Fund's investments had been rendered worthless. But the account statements for the quarter did not capture adverse developments that occurred during that timeframe. Instead, in

the account statements Respondents valued the investment at what the Fund had originally paid for the investment before their determination the investment was worthless.

RESPONSE: Respondents deny the allegations contained in Paragraph 5. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

A. Respondents

6. Augustine Capital Management, LLC, is an Illinois limited liability company, with its principal place of business in Chicago, Illinois. It is an unregistered investment adviser owned by J. Porter, Duszynski and Brian D. Porter. It was formed in 1997 to act as the investment adviser for the Fund, and is the general partner of the Fund. J. Porter and Duszynski control ACM.

RESPONSE: Respondents admit the allegations contained in the first sentence of Paragraph 6. Respondents also admit that ACM was formed in 1997, is not registered with the Commission and is not required to be registered, and is the general partner of the Fund. Respondents deny all remaining allegations in Paragraph 6.

7. John T. Porter, 62 years old, is a resident of Chicago, Illinois and is a one-third owner of ACM. He serves as its chief executive and chairman. He formerly was a futures trader and member of the Chicago Board of Trade. J. Porter has never been registered with the Commission in any capacity.

RESPONSE: Respondents admit the allegations contained in Paragraph 7. Further answering, J. Porter never was required to be registered with the Commission in any capacity.

8. Thomas F. Duszynski, 61 years old, is a resident of Chicago, Illinois, and is a one-third owner of ACM, for which he serves as the chief operating officer, secretary and director. Duszynski was a licensed CPA in Illinois but his status is currently inactive. Duszynski has never been registered with the Commission in any capacity.

RESPONSE: Respondents deny that Duszynski functioned as the chief operating officer during the relevant time period of these allegations. Respondents admit the remaining allegations contained in Paragraph 8. Further answering, Duszynski provided accounting services to the Fund and was never required to be registered with the Commission in any capacity.

B. Other Relevant Individual and Entity

9. Brian D. Porter (“B. Porter”), 58 years old, is a resident of Chicago, Illinois and is a one-third owner of ACM. He is J. Porter’s brother. He was a futures trader and member of the Chicago Board of Trade.

RESPONSE: Respondents admit the allegations continued in Paragraph 9.

10. Augustine Fund, L.P., is an Illinois limited partnership formed in 1997. It operates as a private fund and it meets the definition of a Pooled Investment Vehicle under Section 206(4)-8(b) of the Advisers Act. At all relevant times, ACM managed the Fund.

RESPONSE: Respondents admit the allegations in the first and third sentences of Paragraph 10. The allegations in the second sentence of Paragraph 10 are legal conclusions, and

therefore no response is required. To the extent any response is required, the Respondents deny the allegations in the second sentence of Paragraph 10.

C. Augustine Capital Management and the Augustine Fund

11. In 1997, J. Porter, B. Porter, and Duszynski formed ACM to serve as the investment adviser for a private fund they simultaneously launched, the Fund. ACM is the general partner of the Fund. J. Porter, B. Porter and Duszynski each hold a one-third ownership interest in ACM. J. Porter serves as ACM's chief executive officer and chairman. Duszynski is its chief operating officer. J. Porter and Duszynski handle the Fund's investment decisions and day-to-day operations. The Fund has operated continuously since 1997.

RESPONSE: Respondents admit the allegations contained in the second, third, fourth, and seventh sentences of Paragraph 11. Respondents admit J. Porter handles the Fund's investment decisions and day-to-day operations. During the relevant time period of these allegations, Respondents deny that Duszynski functioned as the chief operating officer and that Duszynski handled the Fund's investment decisions and day-to-day operations Respondents also admit that J. Porter, B. Porter, and Duszynski formed ACM to serve as the general partner for the Fund. Respondents deny all remaining allegations in Paragraph 11.

12. Between 2012 and 2015, the Fund had between 35 and 40 limited partners. During that time the net asset value of the Fund as calculated by ACM ranged between approximately \$9 million and \$14 million. The Fund is governed by a limited partnership agreement, subscription agreement and private offering memorandum ("PPM") (collectively the "Offering Documents").

RESPONSE: Respondents admit the allegations contained in Paragraph 12.

13. Since the early 2000s, the Fund has suffered a number of losses, and its investments have become increasingly illiquid.

RESPONSE: Respondents deny the allegations contained in Paragraph 13. Further answering, during the time period alleged by the Division in this paragraph, the Fund provided returns to its investors of more than 8 percent annually.

D. Respondents Caused the Fund to Engage in Conflicted Transactions Without Disclosing the Conflict and Obtaining Consent.

14. In late 2011 and January 2012, J. Porter and Duszynski caused the Fund to make investments totaling \$500,000 in a new trading venture, FT Investing, LLC (“FT Investing”), in which they and B. Porter held a majority ownership interest. The Fund had no investor advisory committee or other independent entity or person that could effectively consent to conflicted transactions. ACM never disclosed to investors that the Fund had invested in the venture, or that J. Porter and Duszynski had a significant ownership interest in it.

RESPONSE: Respondents admit the Fund made investments totaling \$500,000 in FT Investing. Respondents deny the remaining allegations in Paragraph 14.

15. In December 2013, J. Porter and B. Porter bought out the Fund’s interest in the venture for \$380,000—causing investors to take a 24% loss on their investment. Respondents never apprised investors of this transaction, or of the conflict of interest inherent in the transaction.

RESPONSE: Respondents deny the allegations contained in Paragraph 15. Further answering, J. Porter and B. Porter purchased the Fund’s interest in the venture for \$400,000,

which was a premium over the value of FT Investing at the time of purchase, resulting in a gain for the Fund's investors above the actual value of FT Investing at that time it was purchased.

16. From 2012 through 2014, the Fund made a series of undocumented loans to FT Trading, LLC ("FT Trading"), a wholly owned subsidiary of FT Investing. The loans were made to cover FT Trading's broker-dealer margin calls, which were wholly unrelated to the Fund. The Fund's internal records show that the outstanding balance on these loans reached more than \$600,000 at times. Respondents claimed the Fund received a five percent interest rate on these loans. No loan documents reflected any such arrangement, nor did the Fund's bank records reflect that the Fund received any interest on these loans.

RESPONSE: Respondents admit the Fund made a series of debt investments in FT Trading but deny that the debt investments were unrelated to the Fund and that interest was not collected. Further answering, those debt investments were repaid to the Fund with 5% interest. Respondents deny the remaining allegations contained in Paragraph 16.

17. Reasonable investors would have considered it material that the Fund's monies were being used to make undocumented loans, without their consent, to cover the debts of an entity controlled by J. Porter, Duszynski and B. Porter.

RESPONSE: Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 17 and therefore deny them. Further answering, the term "reasonable investor" is vague and is a legal conclusion, and therefore no response is required.

18. Duszynski, J. Porter, B. Porter and others formed FT Investing in late 2011. In January 2012, Duszynski, with J. Porter's consent, took a \$250,000 loan from the Fund to pay for his ownership interest in the venture. ACM treated this personal loan as one of the Fund's "investments" and allocated it to a subset of investors in the Fund. Nothing in the Offering Documents permitted the Fund to use Fund assets for personal loans to the directors of ACM. Respondents never told investors about this purported investment, let alone procured the investors' consent.

RESPONSE: Respondents admit the allegations contained in first sentence of Paragraph 18. Respondents admit that Fund made a \$250,000 investment in the form of an interest-bearing loan to Duszynski that he used to pay for his ownership interest in the venture. Respondents deny all the remaining allegations in Paragraph 18. Further answering, Respondents also deny the Division's mischaracterization of the Offering Documents and refer to those Documents for a true, correct, and complete description of their terms.

19. Instead, ACM, J. Porter and Duszynski actively concealed this loan from investors. In August 2014, three investors in the Fund requested a description of the investments they held as well as their value. Before they provided any information to the investors, Respondents struggled with how to describe the loan. An email written by J. Porter stated: "We need to discuss how to present the loan to Tom." In another email, he suggested: "We may want to make the loan to our co investor . . . due at the end of this year? That way [an Investor] will know the money is coming and will be less inclined to ask questions. Also, a co investors name should be kept private?" In response, Duszynski wrote: "As for [the loan to Duszynski], I'm not comfortable calling it something else. If we deceive them it could come back and bite us"

Maybe we reallocate some other stuff to the . . . just a thought.” J. Porter had another idea: “Can we call it a loan to something not using your name?”

RESPONSE: Respondents deny the allegations contained in Paragraph 19. Further answering, Respondents deny the Division’s mischaracterization of the e-mails identified in Paragraph 19 and refer to those emails for a true, correct, and complete description of their contents.

20. J. Porter prevailed, and Respondents ultimately agreed on the following verbiage, which was provided to the three investors in August 2014:

Augustine Fund formerly held an investment in FT Investing, LLC. This investment was liquidated in December 2013. When the original investment was made, the Fund also made an interest-bearing loan to one of its co-investors in FT Investing. This loan is on track to be fully repaid on its maturity date in December 2014.

RESPONSE: Respondents deny the allegations in Paragraph 20. Further answering, Respondents deny the Division’s mischaracterization of the information provided to certain investors and refer to those documents for a true, correct, and complete description of their contents.

21. This description was misleading because it did not reflect the conflicted nature of the loan – that is, that the loan was made to Duszynski, a director of ACM. Additionally, it misrepresented the loan’s repayment status, since by then Duszynski had not made begun repaying the loan.

RESPONSE: Respondents deny the allegations in Paragraph 21. The term “misleading” is vague and the terms “conflicted nature” and “misrepresented” call for legal conclusions, and therefore no response is required.

22. Duszynski ultimately defaulted on the loan. He made one payment of \$163,233 on the loan, with \$86,767 left owing. This amount is still outstanding. Respondents made no collection efforts on the investors' behalf, nor did they charge Duszynski the 15 percent default interest rate expressly contemplated in the promissory note.

RESPONSE: Respondents admit Duszynski made one payment of \$163,233 on the loan. Respondents deny the remaining allegations in Paragraph 22. Further answering, Respondents made efforts to collect on the loan, resulting in the \$163,233 payment, and 15% interest is accruing on the remaining portion of the defaulted loan.

23. Reasonable investors would have considered it material both that the Fund's monies were used to make a substantial personal loan to a director of the general partner without the investors' consent, that the director ultimately defaulted on the loan, and that the Fund's managers made no attempt to collect on the loan following the director's default.

RESPONSE: Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23 and therefore deny them. Further answering, the term "reasonable investor" is vague and is a legal conclusion, and therefore no response is required.

E. Respondents Improperly Charged Investors for ACM's Expenses.

24. The Offering Documents entitle ACM to a management fee of one percent *per annum* of the partnership's net asset value. The management fee is intended to compensate ACM for its "overhead and expenses in managing the Partnership." The PPM allows ACM to charge the Fund for "operating expenses" incurred by the Fund, a term defined by the PPM to include communication costs, brokerage commissions, legal, accounting and auditing fees. The

Offering Documents do not contemplate the Fund paying ACM's salaries, healthcare, rent, or other ACM expenses.

RESPONSE: Respondents deny the Division's mischaracterization of the Offering Documents and refer to those documents for a true, correct, and complete description of their terms. Respondents further deny the allegations in Paragraph 24. Further answering, the Offering Documents provided for the Fund to pay all of the expenses incurred in the ordinary course of its business, as disclosed to the Fund's investors.

25. ACM nonetheless charged the Fund for *all* of ACM's expenses. Between 2012 through 2015, ACM totaled all of its expenses on a quarterly basis and deducted them as "operating expenses" from the investors' cash accounts in the Fund. These expenses were unauthorized and exceeded the one percent management fee that the Offering Documents authorized ACM to receive from the Fund.

RESPONSE: Respondents deny the allegations contained in the first and second sentences of Paragraph 25. Respondents deny the Division's mischaracterization of the Offering Documents and refer to those Documents for a true, correct, and complete, description of their terms. Respondents further deny all remaining allegations in Paragraph 25. Further answering, the Offering Documents provided for the Fund to pay all of the expenses incurred in the ordinary course of its business, as disclosed to the Fund's investors.

26. ACM's purported "operating expenses" collected from the Fund included the salaries of Duszynski and two ACM employees: J. Porter's son and an administrative assistant. Additionally, Respondents made the Fund pay rent for ACM's office space and healthcare costs for J. Porter, B. Porter, Duszynski, J. Porter's son and ACM's administrative assistant.

RESPONSE: Respondents deny the allegations in Paragraph 26. Further answering, the Offering Documents provided for the Fund to pay all of the expenses incurred in the ordinary course of its business.

27. The Fund also made transfers to J. Porter totaling more than \$417,000 even though he was not owed these amounts as either salary or a profit distribution and he did not have sufficient available cash in his account in the Fund to cover these withdrawals.

RESPONSE: Respondents deny the allegations in Paragraph 27.

28. J. Porter and Duszynski chose not to allocate any portion of the salary expenses to themselves as limited partners or certain of their relatives who were investors in the Fund. Thus, the remaining Fund investors paid more than a *pro rata* share of the ACM employee's salaries.

RESPONSE: Respondents deny the allegations in Paragraph 28.

29. In 2003, certain investors approved a salary not to exceed \$175,000 per year for J. Porter. The investors never agreed to pay the salaries of the other ACM employees.

RESPONSE: Respondents admit the allegations contained in the first sentence of Paragraph 29. Respondents deny all remaining allegations contained in Paragraph 29. Further answering, the Offering Documents provided for the Fund to pay all of the expenses incurred in the ordinary course of its business.

30. Respondents failed to exercise reasonable care by overcharging the Fund by nearly \$1 million for fees and expenses.

RESPONSE: The allegations in Paragraph 30 are legal conclusions, and therefore no response is required. To the extent a response is required, Respondents deny the allegations contained in Paragraph 30.

F. Respondents Concealed Losses and Bankruptcies from Investors.

31. Respondents provided investors with account statements on a quarterly basis and gave summaries to certain investors in the relevant period. The quarterly statements were titled “Partner’s Investment For The Calendar Quarter” and reflected the month and year of each statement. The quarterly statements included account values as of the date of the statement. The statements were misleading because they included values that were calculated by including the original cost of investments despite the fact that the Respondents had determined certain holdings were worthless and Respondents knew that certain fund holdings were in bankruptcy.

RESPONSE: Respondents admit providing investors on a quarterly basis with account statements titled “Partner’s Investment For The Calendar Quarter.” Respondents deny the remaining allegations contained in Paragraph 31. Further answering, Respondents deny the Division’s mischaracterization of the account statements and refer to those documents for a true, correct, and complete description of their contents.

32. Critically, that disclosure failed to incorporate Respondents’ revised valuation of certain investments as a result of bankruptcies that occurred during the period covered by the account statements. In May 2013, Respondents determined that one of the Fund’s investments was “worthless.” In September 2013 they decided that three other investments had no value.

RESPONSE: Respondents deny the allegations contained in Paragraph 32. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and

its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

33. In some cases Respondents ultimately discounted the value of these investments in documents supplied to investors. But they waited more than a year after first determining the investments were worthless or were in bankruptcy before doing so.

RESPONSE: Respondents deny the allegations contained in Paragraph 33. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

34. In May 2013, Duszynski emailed an investor about the Fund's investment in Company A: "It appears that our remaining investment in [Company A] is worthless." He copied J. Porter on the email. Four months later, in a letter to an investors' wife, Duszynski similarly wrote: "[Company A] is a publicly traded company that has no value, and which we will be writing off this year."

RESPONSE: Because "Company A" has not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34 and therefore deny the allegations. Further answering, Respondents deny the Division's mischaracterization of the e-mails identified in Paragraph 34 and refer to those emails for a true, correct, and complete description of their contents.

35. Respondents did not write off Company A until the fourth quarter of 2014—more than *a year and a half* after they had independently concluded the investment was "worthless."

RESPONSE: Because “Company A” has not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 35 and therefore deny the allegations. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

36. In September 2013, Respondents engaged in similar deception concerning three other investments. These were all investments in which Respondents had concluded that “any future recovery is doubtful,” and thus internally estimated their value at zero. But Respondents failed to account for such developments in the account statements they sent investors during the relevant period. Rather, in such statements to investors Respondents used the initial cost of the investments – which they called the “book value.”

RESPONSE: Because “three other investments” have not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 36 and therefore deny the allegations. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

37. As discussed in paragraphs 38 through 43 below, two companies in which Respondents invested on the investors’ behalf went bankrupt. In communications with investors and in account statements during that timeframe, Respondents misrepresented that these investments were worth what the Fund had initially paid for them years before the bankruptcies.

RESPONSE: Because the “two companies” referenced in Paragraph 37 have not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 37 and therefore deny them. Further answering, Respondents deny that they misrepresented any information to investors in account statements or in communications with investors.

38. In 1999, the Fund made an investment of approximately \$1.67 million in Company B. Thereafter, the company struggled. In November 2001, Respondents forced the company into bankruptcy. As part of the Chapter 11 reorganization, ACM assumed ownership of the company and Respondents transformed it into a publicly traded shell company. The Fund thereafter invested an additional \$1.53 million of Fund monies into the company, but to no avail. From 2004 through 2011, the company had no revenues, limited assets, and mounting liabilities.

RESPONSE: Because Company B has not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 and therefore deny them.

39. Only in February 2012 did Respondents first notify the Fund’s investors that Company B had been forced into bankruptcy more than a decade earlier. But even after that belated disclosure, Respondents then delayed writing off the Fund’s \$3.2 million investment until the first quarter of 2014. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

RESPONSE: Because Company B has not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39 and therefore deny them.

40. Shortly after the Fund invested \$150,000 in Company C, its wholly owned subsidiary and sole asset filed for bankruptcy – in September 2013. Respondents knew about the bankruptcy no later than October 2013. But in ACM’s quarterly statements to investors, Respondents continued to carry Company C at the amount of the Fund’s original investment in the company. They did so for years.

RESPONSE: Because Company C has not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40 and therefore deny them. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

41. In August 2014, internal emails show that Respondents came close to disclosing the bankruptcy filing to three investors who had requested a summary of their holdings in the Fund. But they ultimately omitted this information in the summary sent to investors. Rather, as of 2015, in disclosures to the investors Respondents continued valuing Company C at the cost of the Fund’s original investment in the company before the bankruptcy.

RESPONSE: Because Company C has not been identified in the OIP, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40 and therefore deny them. Further answering, Respondents deny the Division’s

mischaracterization of the e-mails and other documents identified in Paragraph 41 and refer to them for a true, correct, and complete description of their contents. Further answering, Respondents worked diligently to obtain as much value as possible for the Fund and its investors on each investment. Respondents do not change the value of an investment until it is liquidated or no additional returns are possible.

42. As a result, between the first quarter of 2012 and the fourth quarter of 2015 Respondents gave investors quarterly account statements with inflated valuations that did not accurately reflect the value of the investments.

RESPONSE: Respondents deny the allegations contained in Paragraph 42.

43. Reasonable investors would have considered it material that two of the Fund's holdings—including one that had previously made up more than 20% of the Fund's Net Asset Value—were involved in bankruptcy proceedings, and that four other investments had no value. Reasonable investors would have also found it important that Respondents hid such information when Respondents supplied Fund investors with account statements that did not reflect the value of the investments in the wake of the bankruptcies and other events Respondents had determined impacted the value.

RESPONSE: Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 43 and therefore deny them. Further answering, the term "reasonable investor" is vague and is a legal conclusion and therefore no response is required.

G. Respondents Denied Investor Redemption Requests and Prevented Investor Exits from the Fund.

44. The PPM states that limited partnership interests are sold in successive classes, each class invests in the same investment(s), and new investors in the Fund are put into a new class. The classes do not share in the same investments as previous classes. The PPM also states that profits and losses will be shared on a *pro rata* basis by class.

RESPONSE: Respondents deny the Division's mischaracterization of the Offering Documents and refer to those Documents for a true, correct, and complete description of their terms. Respondents deny the allegations in Paragraph 44.

45. In practice, however, that is not the way Respondents managed the Fund. Rather, Respondents never formed classes. During the relevant period, Respondents frequently transferred the investment holdings among and between the Fund's investors, a process they referred to as "reallocation." They did so without the investors' knowledge or consent.

RESPONSE: Respondents deny the allegations contained in Paragraph 45.

46. In at least two instances, the reallocations prevented investors who sought to exit the Fund from doing so. In 2008 an investor requested that the Fund stop using his funds to make new investments, and to pay him any available cash in his account. The Fund maintained a cash component allocated to each investor. J. Porter agreed to this request. Nonetheless, Respondents allocated at least three new investments to this investor in 2012. Doing so took more than \$80,000 of this investor's available cash in the Fund.

RESPONSE: As the investor referenced in Paragraph 46 has not been identified, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 46 and therefore deny them.

47. In October 2012, another investor made clear to J. Porter in an email that “getting cashed out now is my number 1 objective.” J. Porter promised to try to honor the investor’s request. He copied Duszynski on his response. Rather than doing so, however, less than two weeks after he received the email, J. Porter instead directed that another investor’s share of Duszynski’s loan and VHGI – one of the bankrupt companies described above – be allocated to the requesting investor in exchange for the investor’s available cash. This reallocation prevented the investor from withdrawing all his available cash from the Fund.

RESPONSE: As the investor referenced in Paragraph 47 has not been identified, Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 47 and therefore deny them.

H. J. Porter and Duszynski Were Investment Advisers, Committed Violations and Aided and Abetted and Caused ACM’s Violations.

48. At all times, J. Porter and Duszynski managed the Fund’s investments and made all final investment decisions for the Fund. They received salaries for advising the Fund.

RESPONSE: Respondents admit J. Porter received a salary from the Fund and made all final investment decisions for the Fund. Respondents deny the remaining allegations in Paragraph 48. Further answering, during the time period relevant to the allegations, Duszynski received a salary from the Fund for performing accounting services for the Fund.

49. J. Porter and Duszynski decided and directed that: (a) Fund monies were loaned to their private venture and to Duszynski; (b) the Fund invested in J. Porter and Duszynski's private venture; (c) all of ACM's expenses were charged to the Fund; (d) VHGI and the Duszynski loan "investment" were allocated to an investor after he directed Respondents not to make any further investments on his behalf; (e) ACM not disclose Duszynski's receipt of a personal loan from Fund assets; (f) ACM not disclose to investors that certain companies in which the Fund had invested were impacted by bankruptcy proceedings; (g) ACM continued to value investments at the original amount invested and delayed the write-off of other investments it had determined were worthless or were in bankruptcy; and (h) Fund holdings were allocated and reallocated in a manner inconsistent with the offering documents.

RESPONSE: Respondents deny the allegations contained in Paragraph 49 and incorporate by reference, as if fully set forth herein, their answers to Paragraphs 14, 16, 18-21, 24-26, 29, 31-43, and 47.

50. ACM owed fiduciary duties to the Fund. As investment advisers and associated persons of the investment adviser for the Fund, J. Porter and Duszynski were also fiduciaries.

RESPONSE: The allegations in Paragraph 50 are legal conclusions, and therefore no response is required. To the extent any response is required, the Respondents deny the allegations in Paragraph 50.

51. Respondents breached their fiduciary duties to the Fund when they caused the Fund to engage in the above described transactions with FT Investing and FT Trading and caused the Fund to make a personal loan to Duszynski.

RESPONSE: The allegations in Paragraph 51 are legal conclusions, and therefore no response is required. To the extent any response is required, the Respondents deny the allegations in Paragraph 51.

52. Respondents sent misleading account statements and other communications to Fund investors, and engaged in other acts, practices or courses of business that were fraudulent, deceptive, or manipulative by arbitrarily reallocating investment holdings within the Fund and not returning available cash to investors who sought to exit the Fund.

RESPONSE: The allegations in Paragraph 52 are legal conclusions, and therefore no response is required. To the extent any response is required, the Respondents deny the allegations in Paragraph 52.

I. Violations

53. As a result of the conduct described above, Respondents ACM, J. Porter and Duszynski willfully violated, Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a).

RESPONSE: The allegations in Paragraph 53 are legal conclusions, and therefore no response is required. To the extent any response is required, the Respondents deny the allegations in Paragraph 53.

54. As a result of the conduct described above, Respondents J. Porter and Duszynski willfully aided and abetted and caused the violations committed by ACM of Sections 206(1), 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8(a).

RESPONSE: The allegations in Paragraph 54 are legal conclusions, and therefore no response is required. To the extent any response is required, the Respondents deny the allegations in Paragraph 54.

Affirmative Defenses

55. The Commission's administrative proceeding does not provide Respondents with due process because the appointment of and service by the administrative law judges are unconstitutional. *See Bandimere v. SEC*, No. 15-9586, 2016 WL 743 9007 (10th Cir. Dec. 27, 2016).

56. 28 U.S.C. § 2462 bars the Commission from seeking disgorgement, declaratory relief, and civil money penalties prior to December 20, 2011. *See Gabelli v. S.E.C.*, 133 S. Ct. 1216, 1220 (2013); *S.E.C. v. Graham*, 823 F.3d 1357, 1360 (11th Cir. 2016).

Dated: January 17, 2017

Respectfully submitted,



*Attorneys for Respondents
Augustine Capital Management, LLC (f/k/a
Augustine Capital Management, Inc.), John T.
Porter, and Thomas F. Duszynski, CPA*

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17740

In the Matter of

**AUGUSTINE CAPITAL
MANAGEMENT, LLC (F/K/A
AUGUSTINE CAPITAL
MANAGEMENT, INC.), JOHN T.
PORTER, AND THOMAS F.
DUSZYNSKI, CPA,**

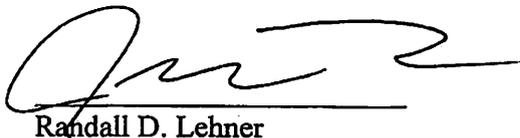
Respondents.

CERTIFICATE OF SERVICE

Janine Fletcher, an attorney, hereby certifies that on January 17, 2017, she caused true and correct copies of the Answer of Respondents Augustine Capital Management, LLC, John T. Porter, and Thomas F. Duszynski, CPA to the Order Instituting Administrative Proceedings and Notice of Hearing to be served on the following via UPS Next Day Air:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

Johnathan S. Polish
Amy S. Cotter
Jaclyn J. Janssen
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Dated: January 17, 2017