

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5061 / November 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18884

In the Matter of

PENNANT MANAGEMENT,
INC.

Respondent.

**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 Pennant Management, Inc. (“Respondent” or “Pennant”).

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 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 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 Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease – and – Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Pennant, an investment adviser, negligently failed to perform adequate due diligence and monitoring of certain investments contrary to representations in its Form ADV Part 2A and in certain communications with its clients, ultimately contributing to substantial losses. From May 2013 to September 2014, Pennant advised clients to purchase interests in facilities and other investments containing repurchase agreements ("repo(s)") originated by a repo counterparty, First Farmers Financial ("First Farmers" or "FFF"). The investments underlying the FFF repos consisted of 26 loans that Pennant believed were guaranteed by the U.S. Department of Agriculture ("USDA"). During the initial due diligence of First Farmers, certain concerning information was not escalated to Pennant's Investment Committee or senior management, and although Pennant represented that it would advise clients of ongoing due diligence and monitoring of repo counterparties, it failed to adequately do so. In particular, despite concerns regarding the legitimacy of the investments starting in April 2014, Pennant continued to offer the FFF repos to clients. By the end of September 2014, Pennant determined that FFF had forged paperwork and that all of the FFF repos were fraudulent.

2. In addition to the due diligence and monitoring failures, from January 2012 to June 2014, Pennant's compliance program lacked sufficient resources and Pennant failed to reasonably design and implement certain policies and procedures. Further, between at least April 2013 and April 2014, Pennant did not consistently follow its repo allocation policy disclosed in its Form ADV Part 2A and failed to maintain records related to repo client indications of interest and trade allocations.

Respondent

3. Pennant, a Milwaukee, Wisconsin based corporation, was registered with the Commission as an investment adviser from April 1995 until May 2015. In 2004, Pennant became a wholly owned subsidiary of an Illinois holding company, (the "Holding Company"). Pennant filed Form ADV-W on May 28, 2015 to de-register with the Commission.

Due Diligence and Monitoring

Pennant's Repo Program

4. Pennant's most significant line of business was its repo program, which offered investment advisory clients the opportunity to purchase *pro rata* shares in nine facilities containing repurchase agreements for portions of loans guaranteed by various government entities, including the USDA. Each facility contained repos sourced exclusively from any one of four sellers ("repo counterparties"). Pennant marketed the facilities as a higher yield alternative to money market

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.

accounts, representing that they “provid[e] daily liquidity and flexibility to match an investor’s specific cash flow needs.” Pennant also purchased the repos for the registered investment company it managed (“Investment Company A”). By the end of 2013, Pennant clients had invested a total of almost \$800 million in the repo program.

5. Pennant clients that invested in the repo facilities executed an Investment Advisory Agreement with Pennant to provide non-discretionary advisory services. The agreements provided that the clients would pay Pennant an annual fee of between 40 and 55 basis points of the total amount actually invested in the facilities.

6. Pennant disclosed in its Form ADV Part 2A that it conducted “initial and ongoing due diligence and monitoring” of repo counterparties and would “advise [repo clients] regarding the ongoing due diligence and monitoring performed by Pennant Management on the repo counterparty sellers...” In marketing materials provided to clients, Pennant represented that it obtained quarterly and annual financial statements from repo counterparties.

7. Pennant also disclosed in its Form ADV Part 2A that its repo program had liquidity risk because collateral might be illiquid if a counterparty seller defaulted. One way that Pennant assessed this risk was through initial and ongoing due diligence and monitoring of a repo counterparty’s financial condition.

8. During this time, however, Pennant did not have reasonably designed written policies and procedures regarding initial and ongoing counterparty due diligence. Rather, Pennant employees had a general practice and used a checklist of documents they were to obtain as part of Pennant’s initial due diligence. That checklist included obtaining the most current audited financial statements and tax returns (among other things) for a potential repo counterparty. There was no written guidance advising Pennant employees about what information within the documents was important to consider, or what to do with information they thought might be problematic.

9. Pennant’s Investment Committee was responsible for approving relationships with repo counterparties, reviewing counterparty financial statements, and authorizing increases of facility credit limits.

10. Repo counterparties approved by Pennant’s Investment Committee entered into Master Repurchase Agreements with Pennant, which obligated the counterparties to provide certain financial information as Pennant “may reasonably request,” including unaudited quarterly financial statements within 30 days of the close of the quarter, and annual audited financial statements within 120 days of the close of the fiscal year. Failure to furnish these financial statements after a written request gave Pennant the right to force an audit of the counterparty at the counterparty’s expense.

Pennant’s Due Diligence of First Farmers

11. In 2012, the USDA had approved First Farmers as a non-traditional lender to originate loans issued pursuant to the USDA’s Rural Development Business and Industry program.

12. At the end of February 2013, one of Pennant's existing counterparties introduced Pennant to First Farmers. First Farmers sought to use Pennant to finance what it claimed would be USDA-guaranteed loans. Pennant began to gather information for the initial due diligence of First Farmers.

13. The information First Farmers provided to Pennant included (among other things) unaudited 2012 financial statements for First Farmers, a 2013 unaudited balance sheet through February 2013 and that it had between five and seven employees. First Farmers told Pennant that it was hiring a new auditor so it did not yet have its 2012 audited financial statements and it would be filing for an extension of its 2012 federal tax return.

14. First Farmers told Pennant that it planned to originate \$140 million in loans during 2013. According to USDA annual reports, that would be more than twice what the top USDA lender originated in 2011 and almost four times what the top USDA lender originated in 2012.

15. Pennant tasked certain employees with conducting the due diligence and monitoring of First Farmers. During its initial due diligence, Pennant hired a private investigation firm to conduct a background check on First Farmers and its principals. The private investigation firm issued a report that the First Farmers CEO had not graduated from college, as he represented to Pennant, and that he had a poor credit history. The background check also showed that, between 2010 and 2012, the First Farmers' CEO had pleaded no contest to assaulting a police officer, been convicted of two DUIs, and been sued multiple times for breach of contract.

16. The Pennant employees tasked with due diligence consulted outside counsel about the First Farmers CEO background information. Other than the DUIs, these employees never reported the First Farmers CEO background information to the Investment Committee or other senior management.

17. Pennant confirmed First Farmers' status as an approved USDA lender, but did not attempt to further verify other representations made by First Farmers or contact references other than the counterparty that introduced Pennant to First Farmers.

18. During the initial due diligence, Pennant's legal counsel told Pennant that the USDA should honor its guarantee unless there was fraud or misrepresentation that Pennant had actual knowledge of or in which Pennant participated. Pennant's legal counsel further recommended that as a best practice, Pennant should obtain USDA Certificates of Incumbency from First Farmers, which are intended to affirm the authority of the USDA officer executing a guarantee. Ultimately, Pennant's Master Repurchase Agreement with First Farmers required that it include a USDA Certificate of Incumbency in each loan package.

19. On May 9, 2013, Pennant's Investment Committee approved the repo facility with First Farmers ("FFF Repo B") with a limit of \$75 million.

20. Shortly after the Investment Committee's approval, Pennant started advising clients to invest in the FFF Repo B facility. None of Pennant's clients were told about the First Farmers

CEO background information or that First Farmers had not provided 2012 audited financial statements as part of Pennant's initial due diligence.

Pennant's Monitoring of First Farmers

21. Three months later, in August 2013, Pennant's Investment Committee raised the FFF Repo B facility limit from \$75 million to \$125 million. At this time, Pennant's Investment Committee still did not have First Farmers' 2012 audited financial statements, 2012 tax return, or any 2013 quarterly financial statements. Pennant employees continued to offer FFF Repo B to its clients but did not tell them Pennant had not received these financial statements.

22. On December 9, 2013, First Farmers provided Pennant with its 2012 audited financial statements. The 2012 audited financial statements contained discrepancies with the 2012 unaudited financial information First Farmers had provided during the initial due diligence, but Pennant did not seek any further explanation from First Farmers. At this time, First Farmers also had not provided Pennant with any of its three 2013 quarterly financial statements.

23. By this time, Pennant clients had invested more than \$91 million in the First Farmers facilities. In addition, on December 13, 2013, Pennant purchased a \$2,614,634.15 repo from First Farmers for Investment Company A, a registered investment company it managed. This investment represented approximately 7% of the fund's value. Pennant did not disclose to Investment Company A any of the First Farmers CEO background information or First Farmers' failure to provide timely financial information.

24. In April 2014, First Farmers provided Pennant with a 2013 audited financial statement purportedly audited by a new auditor ("First Farmers Auditor"). A new Pennant employee ("Employee A") raised concerns about the First Farmers Auditor because he could not find evidence on the internet that the First Farmers Auditor existed. Another Pennant employee asked First Farmers for additional information about the First Farmers Auditor and in return received a short background statement purportedly written by the new auditor.

25. Despite the concerns about the existence of the First Farmers Auditor, and First Farmers' failure to provide Pennant with its 2014 first quarter financial statement, on April 17, 2014, the Pennant Investment Committee raised the FFF Repo B facility limit to \$150 million. The Investment Committee asked a Pennant employee to follow-up with the First Farmers Auditor, which that employee failed to do.

26. On June 19, 2014, the Pennant Investment Committee again raised the FFF Repo B facility limit to \$200 million even though it had not resolved the concerns over the existence of the First Farmers Auditor or obtained the 2014 first quarter financial statement from First Farmers. Throughout this time, Pennant continued offering FFF Repo B to clients and did not disclose to clients any of the concerns about First Farmers.

27. At the end of July 2014, Employee A held an on-site visit at First Farmers' offices. After that meeting, Employee A advised Pennant's CEO that he had concerns about First Farmers.

As a result, Pennant's CEO authorized additional due diligence by a private investigation firm on both First Farmers and the First Farmers Auditor.

28. On August 28, 2014, several Pennant clients purchased an additional \$5 million of FFF Repo B. Later that day, after the transactions had occurred, the private investigation firm confirmed to Pennant that it could not locate a CPA in Florida with the First Farmers Auditor's name.

29. Pennant asked the private investigation firm to perform further due diligence on First Farmers and conducted an audit of the loans it had purchased from First Farmers. In mid-September, the private investigation firm informed Pennant that it could not locate the purported underlying borrowers for several of the First Farmers loans. Pennant also learned that First Farmers had not provided USDA Certificates of Incumbency as recommended by its legal counsel and required by the Master Repurchase Agreement. At the direction of Pennant's CEO, Pennant contacted the USDA and law enforcement personnel and began consulting an outside law firm.

30. In order to maintain the confidentiality of its investigative efforts and to avoid alerting First Farmers' CEO, only a limited number of people within Pennant were aware of Pennant's investigation into First Farmers. As a result, Pennant did not disclose what it was learning about First Farmers to clients invested in First Farmers repo, which included a private fund. During September 2014, this fund received new investments of \$24 million.

31. On September 25, 2014, the USDA confirmed to Pennant that a representative sample of the loans purchased from First Farmers were fraudulent and subsequently informed Pennant that it would not honor the guarantees. On September 29, 2014, Pennant filed a complaint against First Farmers and its CEO in the Northern District of Illinois. On September 30, 2014, the FBI arrested First Farmers' CEO and Pennant informed its clients about the fraud.

Compliance and Other Violations

Pennant's Compliance Program

32. In January 2012, Pennant's CEO asked one of Pennant's portfolio managers to assume the role of interim CCO for Pennant ("the CCO"). The CCO had no compliance experience, but accepted the position contingent upon having access to outside counsel and compliance consultants as needed. At that time, the CCO was already working extended hours to keep up with his portfolio manager duties, which he retained.

33. After educating himself about the compliance requirements of a registered investment adviser, and reviewing Pennant's compliance policies and procedures, the CCO concluded that Pennant's compliance program was deficient and advised Pennant's CEO of his concerns. For example, in a March 2012 e-mail to Pennant's CEO and others, the CCO raised questions about Pennant's policies and procedures manual and advised:

In my opinion, we need the experience of an outside resource right now to help us evaluate the status of our compliance program, including our investment adviser policies and procedures manual.

Pennant, however, did not retain additional outside resources at that time.

34. In May 2012, after attending a compliance conference, the CCO notified Pennant's CEO that Pennant had never completed a formal risk assessment, which he believed was necessary for an effective compliance program. The CCO also noted his understanding was that the Commission was looking closely at compliance policies and procedures and warned that, "inadequate policies could lead to enforcement action." Consequently, the CCO indicated his "primary objective" would be to review the policies and procedures and complete a risk assessment. The CCO completed his review of the policies and procedures during 2012, and he completed a risk assessment for Pennant by September 2012.

35. In August 2012, Pennant's CEO offered to make the CCO's interim position permanent. The CCO accepted on the condition that he would have access to outside counsel, Pennant would engage compliance consultants as needed to improve the compliance program, and he would relinquish his portfolio management duties to eliminate inherent conflicts. Pennant's CEO agreed to these conditions, but soon afterwards gave the CCO additional compliance duties. Pennant did not add compliance resources at that time.

36. In December 2012, the CCO and Pennant's President and COO ("President A") gave Pennant's CEO a list of high priority compliance projects that needed to be completed and requested more compliance resources. The CCO reported directly to President A, who reported to Pennant's CEO. Pennant's CEO rejected the request and told the CCO and President A to "re-task" Pennant's existing staff to help with compliance. Initially the CCO told Pennant's CEO that the staff was very supportive and cooperating with the re-tasking, but later told Pennant's CEO that he did not think the re-tasking was sufficient. Pennant's CEO did not change his position to add more resources at that time. Therefore, the CCO went forward with re-tasking the staff.

37. Soon thereafter, based on Pennant's CEO's and the Holding Company management's decision not to add compliance resources, Pennant cut \$80,000 from Pennant's proposed 2013 budget, which had been earmarked to hire another compliance staff member.

38. In January 2013, Pennant's CEO and the Holding Company management expanded the CCO's compliance obligations and diverted the CCO's resources to new tasks. In particular, on January 16, 2013, Pennant's CEO and the Holding Company management appointed the CCO as the CCO of the newly registered Investment Company A. In addition, in late January 2013, Pennant's CEO and the Holding Company management decided to use Pennant's staff, including the CCO, to launch a new mutual fund ("Investment Company B") and a new investment adviser ("Adviser A").

39. In February 2013, the CCO presented his 2012 annual compliance review to Pennant's Board of Directors, including Pennant's CEO. Although the CCO stated that executive management at Pennant had demonstrated its commitment to the compliance culture by the

creation of a dedicated CCO position and the hiring of a Chief Legal Officer at the Holding Company, he identified several weaknesses in Pennant's compliance program, including, but not limited to, compliance program testing and training. The CCO also noted his limited experience, which necessitated his reliance on outside resources, and that he expected this need to increase in 2013 because of the additional demands placed on him. He closed by noting:

In my professional opinion, there is a risk that a compliance issue may go unnoticed due to limited resources available for testing and auditing of the numerous areas of the firm's compliance program. In 2012, I urged the firm's executive management to add a position for a compliance officer to the staff of Pennant to focus on compliance program testing, training and other issues. I will continue to suggest this in 2013.

Despite these warnings, Pennant did not hire additional compliance resources in 2013.

40. On multiple occasions during 2013, Pennant's CEO denied requests from the CCO and President A for additional resources.

41. By the end of 2013, the CCO had compliance responsibilities for four registered entities: Pennant, Investment Company A, Investment Company B and Adviser A.

42. In October 2013, Pennant hired a new President and COO ("President B") to replace President A and Pennant's CEO as CIO. The CCO reported to President B and the Chief Legal Officer of the Holding Company, who reported to Pennant's CEO. Soon thereafter, President B also asked Pennant's CEO for more compliance resources for 2014. While Pennant's CEO and the Holding Company management approved the hiring of new business staff at Pennant for 2014, they did not approve additional resources for compliance at that time.

43. On January 28, 2014, the CCO presented his 2013 annual compliance review to Pennant's Board of Directors, including Pennant's CEO. This review stated that in 2013 the CCO was involved in the day-to-day administration of Pennant's operations and two other affiliated entities (Investment Company A and Investment Company B), led the reorganization of two mutual funds, reorganized a short-term investment fund, and worked on aspects of operational system conversions, among other responsibilities. The report noted that since the last review, the CCO assumed responsibility for compliance oversight of three other entities (Investment Company A, Investment Company B and Adviser A) in addition to his role as Pennant's CCO. Consequently, the report noted that, "[s]ince the [compliance] program was recently updated, and because of limited resources and increased demands on my time, the review of Pennant's compliance program was not as in-depth in 2013 as it was in 2012."

44. As in the 2012 report, the CCO's 2013 report reiterated his concerns about the risk resulting from insufficient resources:

As stated in the Annual Review for 2012, there is a risk that a compliance issue may go unnoticed due to limited resources available for testing and auditing of the numerous areas of the firm's compliance program.

The CCO further explained that while 2013 was a year of transition for Pennant, his understanding was that there were plans in place to strengthen Pennant's compliance functions. The CCO also detailed the compliance actions that Pennant planned to take in 2014, including hiring another business person to allow a current staff member to focus on compliance related projects; and the engagement of an outside compliance consultant. At this time, however, no money was budgeted for additional compliance resources.

45. In February 2014, the CCO raised the need for additional compliance resources with the trustees of Investment Company A and Investment Company B. The independent trustees raised the issue with Pennant's CEO. In June 2014, Pennant hired a compliance analyst, and in July 2014, Pennant engaged an outside compliance consultant to evaluate its compliance program.

Pennant's compliance failures

46. The denial of resources undermined the effectiveness of Pennant's compliance program resulting in compliance failures.

47. For example, Pennant did not regularly monitor staff e-mails as required by its written policies and procedures. As a result, Pennant failed to detect that one of its employees had repeatedly engaged in unauthorized activities, including violating Pennant's gift reporting policy.

48. Pennant also failed to test whether its staff was following its policies and procedures. For example, in April 2013, Pennant disclosed in its Form ADV Part 2A that it had implemented a new policy requiring allocation of investment opportunities in repurchase agreement facilities to clients on a strict "first come, first serve" basis. Pennant kept track of the order in which clients expressed interest in purchasing repo on an erasable "white board," but did not maintain permanent records of those indications of interest or the basis for how it allocated repo.

49. Due to the scope of his duties and lack of resources, the CCO was unable to test compliance with the repo allocation procedure.

50. The CCO learned in January 2014 that: (i) the employee responsible for repo allocation likely was not following the allocation policy, and therefore certain clients may have received preferential treatment; and (ii) Pennant was not maintaining records formally documenting repo client indications of interest and the basis for allocation decisions.

51. As a result, from at least April 2013 through April 2014, at least one Pennant employee did not consistently follow the repo allocation policy.

52. Further, Pennant's most significant line of business was its repo program, which offered investment advisory clients the opportunity to purchase pro rata shares in nine facilities containing portions of loans intended to be guaranteed by either the SBA or USDA, backed by the full faith and credit of the federal government. Each facility contained loans sourced exclusively

from any one of four counterparties. By the end of 2013, clients had invested a total of almost \$800 million in the program based on Pennant's advice.

53. As part of Pennant's ongoing due diligence of counterparties, the repo agreements required counterparties to provide Pennant with quarterly unaudited and annual audited financial statements.

54. From 2012 through 2014, Pennant had a process, developed by Pennant's CEO, for performing counterparty initial and ongoing due diligence and monitoring in its repo program, which included a written checklist setting forth the information that would be obtained from prospective counterparties during initial due diligence. However, Pennant did not have a process in its written policies and procedures regarding initial and ongoing counterparty due diligence and monitoring.

55. Pennant's CCO stated that counterparty risk was a significant risk to Pennant in his 2012 and 2013 annual risk assessments, which he escalated to Pennant's CEO and the Board of Directors.

56. In April 2013, after the CCO provided the risk assessment raising this concern, Pennant's CEO contacted an officer at an affiliated entity to inquire if this individual would be willing to manage repo counterparty activities for Pennant. Pennant's CEO's inquiry included advising this individual that he would be involved in developing the repo counterparty due diligence practices into a "process that requires absolute adherence." This did not occur, and Pennant's CEO did not engage in any other efforts to amend Pennant's written policies and procedures to include counterparty due diligence and monitoring.

Subsequent compliance efforts by Pennant

57. In June and July 2014, Pennant hired a full-time compliance analyst to report directly to and support Pennant's CCO, and engaged an outside compliance consultant to conduct a gap analysis of the firm's regulatory compliance program.

Violations

58. As a result of the conduct described above, Pennant willfully² violated Section 204 of the Advisers Act and Rule 204-2(a)(3) thereunder, which require a registered investment adviser to make and keep true, accurate and current books and records relating to its investment advisory business, including a memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction.

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

59. As a result of the conduct described above, Pennant willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

60. As a result of the conduct described above, Pennant willfully violated Section 206(4) 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, and to review, no less frequently than annually, the adequacy of the policies and procedures and the effectiveness of their implementation. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

61. As a result of the conduct described above, Pennant willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of material fact in any registration application or report filed with the Commission...or willfully omit to state in any such application or report any material fact which is required to be stated therein.”

IV.

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

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

A. Respondent Pennant cease and desist from committing or causing any violations and any future violations of Sections 204, 206(2), 206(4), and 207 of the Advisers Act and Rules 204-2(a)(3) and 206(4)-7 promulgated thereunder.

B. Respondent Pennant is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$400,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. 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, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. 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 Pennant 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 Paul A. Montoya, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, IL, 60604.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty referenced in paragraph C above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, 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.

Brent J. Fields
Secretary