

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83637 / July 16, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4968 / July 16, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18596

In the Matter of

NORMAN M.K. LOUIE
and
MOUNT KELLETT
CAPITAL MANAGEMENT LP,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
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 cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Norman M.K. Louie (“Louie”) and that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act against Mount Kellett Capital Management LP (“Mount Kellett”) (collectively referred to as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent

to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934 and 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’ Offers, the Commission finds¹ that:

Summary

1. This matter concerns disclosure violations arising from an undocumented and undisclosed \$3 million dollar loan from Norman M.K. Louie (“Louie”), who at the time was a lead portfolio manager for Mount Kellett, an investment adviser holding the largest investor position in Energy XXI Ltd. (“EXXI”), a public oil and gas company, to John D. Schiller, Jr. (“Schiller”), EXXI’s then chief executive officer. At or around the time of the loan, Louie was a candidate under consideration by EXXI to join its board of directors, and following the loan, Schiller, who did not disclose the loan to EXXI, voted in favor of Louie’s appointment to the board. Louie failed to disclose the loan to EXXI despite knowing that the company filed a Form 8-K, which publicly disclosed that there were no understandings or arrangements between Louie and others at EXXI that would compromise Louie’s independence as a board member of EXXI. Further, the Form 8-K did not disclose the loan between Louie and Schiller. As a result, Louie caused EXXI’s misleading and inaccurate Form 8-K disclosure. Louie also failed to disclose the loan to Mount Kellett, causing the firm’s failure to disclose to its clients the conflict of interest arising from the loan.

2. In addition, this matter concerns violations of the beneficial ownership provisions of Section 13(d) of the Exchange Act by Mount Kellett. Section 13(d) of the Exchange Act and related rules together require any person, including a group, who directly or indirectly acquires beneficial ownership of more than five percent of a class of certain equity securities to file with the Commission, within ten days, a Schedule 13D disclosing the purpose of the acquisition of securities, including any plans to affect the issuer’s Board of Directors. Section 13(d) is a key regulatory provision that allows shareholders and potential investors to evaluate substantial shareholdings and the implications of such shareholdings for their own investment in the security. In contrast, certain large investors who qualify as passive investors can report beneficial ownership on a Schedule 13G, which allows disclosure of much more limited information. Investors unable or unwilling to certify that they do not have a disqualifying purpose or effect because, for example, the possibility exists that they may seek to exercise or influence control upon the issuer, are ineligible to initially file or, if already a filer, continue reporting beneficial ownership on a Schedule 13G. To the extent an existing Schedule 13G filer is no longer able to lawfully make the required certification, the filer must, pursuant to Rule 13d-1(e), file a Schedule 13D.

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

3. By the end of October 2014, Mount Kellett, the advisory clients of which collectively had a 6.3% ownership interest in EXXI, incurred an obligation to file a Schedule 13D because it had taken substantial steps in furtherance of a plan, which was ultimately successful, to place Louie on the EXXI board of directors. As such, by that time, Mount Kellett could no longer certify that it was a passive investor in EXXI securities and, therefore, was no longer eligible to rely on Rule 13d-1(c) to report its beneficial ownership in a Schedule 13G filing. Mount Kellett, however, failed to file a Schedule 13D until December 2014 – approximately 45 days *after* it incurred a legal filing obligation. In addition, Mount Kellett failed to adopt and implement written policies and procedures reasonably designed to identify and address conflicts of interest, such as the conflict that arose from the loan between Louie and Schiller.

Respondents

4. **Norman M.K. Louie**, age 52, is a resident of Forest Hills, New York. During the relevant period, Louie was a managing director, co-head of the North American investment team, and a portfolio manager at Mount Kellett. Louie joined Mount Kellett in August 2008, and separated from the firm in March 2015. From December 2014 until December 2015, Louie was a member of the EXXI board of directors and, for several months, also served on several sub-committees of the board, including its compensation and audit committees.

5. **Mount Kellett Capital Management LP**, a Delaware limited partnership formed in 2008 and headquartered in New York, New York, is an investment adviser that has been registered with the Commission since March 2012. Mount Kellett manages private funds and separately managed accounts focused on global distressed, special situations, and opportunistic investing and maintains the sole power to vote and dispose of the shares owned by the funds. During the relevant period, Mount Kellett was EXXI's largest shareholder, beneficially owning 6.3% of EXXI's common stock. Also during the relevant period, Mount Kellett reported approximately \$7.5 billion in regulatory assets under management as of July 31, 2014, but that amount declined to approximately \$5.1 billion as of December 31, 2014. Most recently, as of December 31, 2017, Mount Kellett reported approximately \$1.8 billion in regulatory assets under management.

Other Relevant Entity

6. **Energy XXI, Ltd. ("EXXI")**, incorporated as an exempted company under Bermuda law, was an independent oil and natural gas exploration and production company headquartered in Houston, Texas. Founded in July 2005, EXXI became the largest public independent producer on the Gulf of Mexico shelf. From August 2007 to May 2016, EXXI common stock was listed on NASDAQ and traded under the symbol "EXXI". During the relevant period, EXXI had a market capitalization of approximately \$2 billion. On April 14, 2016, the company filed for bankruptcy seeking reorganization under Chapter 11 of the Bankruptcy code. On December 13, 2016, EXXI's plan of reorganization was approved by the bankruptcy court and became effective on December 30, 2016 whereupon EXXI was dissolved and its assets vested in a new parent, Energy XXI Gulf Coast, Inc.

Facts

7. On December 21, 2009, Mount Kellett filed a Schedule 13G to report that it held 8.2% of EXXI stock. In the Schedule 13G, Mount Kellett certified that its EXXI shares “were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.” Mount Kellett later amended that filing three times to report changes in the amount of shares it owned. Beginning in 2011, Mount Kellett was the largest shareholder of EXXI, beneficially owning 8.4% of the company’s common stock.

8. On February 14, 2012, Mount Kellett filed the last of its three amendments to Schedule 13G. In response to the disclosure requirement under Item 10, titled “Certifications,” Mount Kellett certified that it did not hold EXXI securities “for the purpose of or with the effect of changing or influencing control of” EXXI.

9. During the relevant time, Louie served as a Mount Kellett managing director, co-head of the North American investment team, and a portfolio manager. In these roles, Louie was responsible for Mount Kellett’s oil and gas holdings, including the EXXI investment position. Prior to the relevant period, Louie had sporadic meetings with EXXI’s management, including Schiller, who was also the company’s founder and served as chairman of EXXI’s board of directors. During the relevant period, however, in the course of his duties, Louie had more regular meetings with EXXI’s management and Schiller.

10. In June 2014, EXXI finalized its acquisition of another oil and gas company for approximately \$2.3 billion. The acquisition was not well received by the market, resulting in EXXI’s stock price being negatively affected. In August 2014, EXXI held its first earnings call after the acquisition was completed, where it reported disappointing fourth quarter earnings, resulting in EXXI’s stock price further decreasing. These events caused Louie, as the Mount Kellett employee responsible for the EXXI investment, to increase Mount Kellett’s focus on the performance of EXXI’s management. Specifically, Mount Kellett became more engaged with EXXI’s officers and directors, including Schiller, and advocated for operational changes that would improve the company’s financial performance.

11. By at least August of 2014, Mount Kellett had internal discussions concerning Louie joining the EXXI board to represent the interests of Mount Kellett’s investment in the company. On August 14, 2014, Louie emailed a Mount Kellett financial analyst who worked with him on the EXXI investment, stating “I need to get on board” of EXXI. Louie and the analyst were concerned that Schiller did not have the “appetite to make the tough moves” to solve the problems with EXXI’s “weak organization.”

12. By September 2014, Louie and the same Mount Kellett financial analyst engaged in meetings with EXXI officers to discuss challenges facing the company. Louie discussed these actions with other Mount Kellett employees. For example, in a September 10, 2014 email, Louie informed a senior executive who was the head of Mount Kellett’s asset management group that he will be “in dallas [Tuesday] to get 2 board seats at exxi.”

13. On October 9, 2014, Louie and the Mount Kellett financial analyst held meetings with several senior EXXI officers, including Schiller, at EXXI's Houston headquarters to gain a deeper understanding of EXXI's problems directly from senior management. Among other things, Louie discussed a potential promotion of an EXXI executive to chief operating officer. They also met with the person who would later replace EXXI's chief financial officer.

14. At the end of the October 9th meeting, Schiller asked Louie for a private discussion. Outside the presence of the Mount Kellett financial analyst and others, Schiller requested Louie to provide him a loan of \$2 million. Schiller advised Louie that he needed the loan to cover a margin call by a broker-dealer that held his margin account, which was collateralized by EXXI stock. Schiller informed Louie that the broker-dealer would sell his collateralized EXXI stock if he was unable to satisfy the margin call by the next morning. Later that evening, Schiller called Louie and increased the requested loan amount to \$3 million in order to cover the margin call.

15. The next day, on October 10, 2014, Louie agreed to the loan request by Schiller and wired \$3 million from his personal bank account to Schiller's brokerage account.

16. There was no written documentation of the loan between Louie and Schiller, including whether the loan would bear interest or include acceleration provisions or a maturity date, until after the Commission's investigation commenced. In addition, until the Commission commenced an investigation, Louie and Schiller kept the loan a secret, failing to disclose it to Mount Kellett, EXXI, or the company's board of directors.

17. Following the loan between Louie and Schiller, Mount Kellett continued to make recommendations to EXXI that were aimed at making changes to its management and turning around its financial performance. In this regard, Mount Kellett presented Schiller with an 18-page PowerPoint presentation, dated October 13, 2014, which advocated for EXXI to require a stronger board of directors, implement a reduction in force, and to replace EXXI's chief financial officer.

18. By mid-October 2014, Schiller considered Louie to be an official candidate for a board seat. Louie began to go through EXXI's formal vetting process required to join the company's board, including the process of going through interviews with EXXI's lead outside director.

19. Louie's candidacy for a board seat was contrary to EXXI's publicly stated position that it neither sought to elect new candidates nor expand the size of the board. Although Schiller had remarked about his desire to add two members to EXXI's board at an industry conference, EXXI disclosed in its October 2014 proxy statement that it sought to reelect two of its existing board members. It also stated: "Following the 2014 annual general meeting, our board of directors will continue to have seven members."

20. By this time, even though Louie had not been formally appointed to the EXXI board, he was acting as a *de facto* board member. On October 18, 2014, for example, he attended a telephonic board meeting to discuss operations and the financial condition of the company. On October 28, 2014, Louie and the Mount Kellett financial analyst emailed a list of

recommended changes to EXXI's lead outside director and Schiller. The e-mail noted "operations are a mess" and that "[i]nvestors don't have unlimited patience." Among other things, Louie and Mount Kellett urged EXXI to reduce its exploration budget and eliminate certain senior officer perks, such as getting rid of a company drinking lounge for its senior-most executives known as "the Denny Crane room," the company ranch, the company plane, sporting event tickets, and a company policy that allowed certain employees to take Fridays off from work. Although EXXI was also vetting a second candidate to join the board alongside Louie, only Louie, as Mount Kellett's representative, was invited to attend board meetings and make recommendations to the board.

21. On November 3, 2014, the nomination committee of EXXI's board of directors had discussions concerning Louie and the second candidate joining the board. Both Louie and the second candidate, who were not employees of EXXI and did not otherwise have business relationships with the company, were being considered for independent board seats.

22. At this time, although Louie was still not yet formally appointed to the board, he continued to act as a *de facto* board member. Specifically, on November 6, 2014, the EXXI board, at Louie's suggestion, formed a special sub-committee of the top three officers and the independent directors. The second candidate for the board, however, was not asked to serve on this sub-committee, and he did not participate in discussions leading up to the creation of the sub-committee. Thereafter, the special sub-committee held regular discussions with management of EXXI, including the consideration of proposals for cost cutting, capital allocation, oil well development, and changes to the tone at the top. Louie participated in these discussions even though he was not yet appointed to the EXXI board. Mount Kellett was aware that Louie was a member of the Board's sub-committee.

23. On December 2, 2014, in its New York office, Mount Kellett held an internal advisory committee meeting to address the firm's energy portfolio. Mount Kellett told its clients that the "[l]ack of management and [b]oard credibility" at EXXI required "decisive action." To that end, Mount Kellett informed its clients that the CFO and Chief Operating Officer had been replaced, overhaul of operations were underway and the company had publicly committed to appointing two new independent directors.

24. By December, EXXI took corporate governance actions geared towards preparing its board members for taking a vote on formally appointing Louie to the board. For example, on December 1, 2014, EXXI's senior legal officer sent Louie an officer and director questionnaire that would have elicited disclosure of his loan to Schiller. Among other things, the questionnaire inquired whether Louie had any transaction, arrangement, or relationship (in excess of \$120,000) in which the company was a participant and in which Louie or a related person to the company had a direct or indirect interest. It also inquired whether Louie was aware of any conflict or potential conflict of interest involving any person subject to EXXI's conflict of interest policy and called for him to disclose any existing or proposed relationships (other than his service as a board member) between Louie and the company however slight or remote.

25. In the next several days, EXXI's senior legal officer repeatedly requested Louie to complete the officer and director questionnaire. Despite these requests, Louie never completed

the questionnaire. In fact, Louie did not disclose the loan to EXXI through the questionnaire or any other means prior to joining the board.

26. On December 10, 2014, in connection with EXXI's upcoming Form 8-K filing that would publicly disclose Louie's appointment to the board as an independent board member, EXXI's senior legal officer sent an email to Louie and others that confirmed EXXI's understanding that, among other things, "Mr. Louie's appointment to our Board will be on the same terms as our existing independent Board members." A few days later, on the morning of December 15, 2014, EXXI's senior legal officer sent Louie a draft Form 8-K, stating "[t]here are no understandings or arrangements between Mr. Louie and any other person" that would compromise Louie's independence as a board member of EXXI. In response, Louie remained silent without disclosing his \$3 million loan to Schiller, which still remained outstanding at this time.

27. On December 15, 2014, the EXXI board voted in favor of appointing Louie and a second candidate to join the EXXI board. Neither Louie nor Schiller disclosed the loan to the board prior to their vote. Schiller, who did not recuse himself from the vote, cast his vote in favor of appointing Louie to the board.

28. Later that same day, on December 15, 2014, EXXI filed a Form 8-K announcing the new appointments to the EXXI board and stating the exact language that Louie was asked to review and approve prior to the filing. The Form 8-K did not disclose the loan between Louie and Schiller. This statement was inaccurate and materially misleading by omission because the \$3 million loan between Louie and Schiller compromised Louie's ability to serve as an independent director of EXXI's board.

29. On December 22, 2014, approximately 45 days after it had incurred a filing obligation, Mount Kellett filed a Schedule 13D, disclosing that Louie was appointed to the EXXI board of directors on December 15, 2014.

30. Once he joined the board, Louie received training regarding the EXXI Code of Ethics in January 2015. The code required Louie to disclose potential conflicts of interest to EXXI. Conflicts included relationships between employees where an employee is in a position to influence a company decision for personal gain or to benefit a close friend or relative. Despite the training, Louie did not disclose the loan to EXXI while on the board.

31. In January 2015 and before Louie told Mount Kellett about the loan, Louie and Mount Kellett had discussions about Louie separating from the firm.

32. In February 2015, Mount Kellett received a document request from Commission staff in connection with its investigation.

33. In March 2015, Louie finally disclosed the loan to Mount Kellett and EXXI. Shortly thereafter, both Louie and Mount Kellett reported the loan to Commission staff.

34. On March 31, 2015, after Mount Kellett learned of the loan, Louie separated from Mount Kellett.

35. After learning of the loan, EXXI's board of directors took steps designed to remediate Louie's lack of independence, including removing Louie from the compensation and audit committees, declining to re-nominate him to the board and publicly disclosing the loan in a subsequent Form 10-K filed on September 29, 2015.

36. In October 2015, more than seven months after Louie was on notice of the Commission's investigation, Louie completed the EXXI officer and director questionnaire, disclosing the loan in response to questions concerning related person transactions and director independence. At this time, Louie and Schiller also memorialized the terms of the loan in a written document.

A. Louie Caused EXXI to File an Inaccurate and Misleading Form 8-K

37. Louie was aware that EXXI would publicly disclose in its Form 8-K that there were no understandings or arrangements between Louie and others at EXXI that would compromise Louie's independence as a board member of EXXI. Louie affirmed the accuracy of this public disclosure to EXXI without disclosing the loan.

38. By omitting the loan from the disclosure, the statement in EXXI's Form 8-K was misleading because it created the false impression of Louie's independence as a board member even though his independence was compromised by Schiller owing him \$3 million. As EXXI's shareholders understood, Louie would serve as an independent board member. At least two directors would not have voted for Louie to join the board had they known about the loan.

39. The omission of the loan from the Form 8-K was material. With regard to the Form 8-K, EXXI's investors were led to believe that Louie was an independent director when, in fact, the \$3 million loan impaired Louie's independence. Louie served on the EXXI's audit committee and compensation committee, which required independence by Louie based on the company's public disclosures. Further, EXXI, as a company whose stock was listed on the NASDAQ at the time, was required to meet NASDAQ listing requirements, including independence qualifications for directors serving on the audit and compensation committees. The requirements expressly prohibit the existence of any relationship which in the opinion of the issuer's board of directors would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

40. By failing to disclose the loan to EXXI, including through the officer and director questionnaire, or in connection with his review of the draft Form 8-K, or during communications with EXXI board members and management, Louie caused EXXI to file an inaccurate and misleading Form 8-K.

B. Louie Caused Mount Kellett's Failure to Disclose a Conflict of Interest to its Clients

41. The loan created a conflict of interest for Louie and Mount Kellett and should have been disclosed to Mount Kellett's clients. As a portfolio manager, Louie was required to exercise the utmost good faith in dealing with the firm's clients – including to fully and fairly disclose all material facts and to employ reasonable care to avoid misleading those clients. It

was the firm's clients, not Louie, who were entitled to determine whether Louie, by making the loan, was acting in their best interest or his own self-interest, as well as how the loan might affect Louie's future decision-making regarding Mount Kellett's EXXI position. This conflict of interest became even more acute once Louie was nominated for, and ultimately joined, the EXXI board of directors.

42. By not disclosing the loan to Mount Kellett, Louie caused Mount Kellett's failure to disclose the conflict of interest to Mount Kellett's clients.

C. Mount Kellett Failed to Report a Control Purpose or Effect in Reporting its Beneficial Ownership of EXXI Securities

43. By the end of October 2014, after it had taken a series of steps in furtherance of a plan to place Louie on the board of EXXI, Mount Kellett could no longer accurately certify that it held its EXXI securities without a control purpose or effect and consequently was no longer eligible to remain on a Schedule 13G filing.

44. As Mount Kellett was aware, Louie, among other things, met with EXXI's board in connection with obtaining a board seat, underwent EXXI's formal vetting process for joining the board, attended meetings of EXXI's board and participated in the board's deliberations at these meetings even before becoming a board member, assembled and served on an EXXI board subcommittee, and made successful efforts to replace EXXI's senior management, direct its business strategy, and drive positive reforms at EXXI. Notwithstanding the unambiguous language in Rule 13d-1(e)(1) that compelled Mount Kellett to file a Schedule 13D within ten days of the date in which it held EXXI stock with a disqualifying purpose or effect, Mount Kellett failed to file a Schedule 13D and report the change until December 22, 2014, approximately 45 days *after* incurring a filing obligation.

D. Mount Kellett Failed to Adopt and Implement Policies and Procedures to Identify and Address Conflicts of Interest

45. Mount Kellett did not have adequate policies and procedures in place to assist supervised persons in identifying and addressing conflicts of interest, and did not provide sufficient guidelines and expectations for both the firm and its employees.

46. While Mount Kellett's policies and procedures alerted its employees to some typical, specific conflicts of interest areas, such as personal trading, outside activities and gifts and entertainment, they did not discuss conflicts of interest more broadly in sufficient depth so as to capture and train employees to recognize other violative conduct not specifically identified. For example, there was nothing generally in the policies and procedures that would advise an employee that a transaction *such as* a personal loan to a senior officer of a portfolio company gives rise to serious conflicts of interest and must be disclosed to and vetted by Mount Kellett.

47. By not adequately identifying and addressing conflicts of interest, Mount Kellett failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act by Mount Kellett and its supervised persons.

Violations

48. As a result of the conduct described above, Louie caused EXXI to violate Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 thereunder, which requires an issuer to file with the Commission accurate current reports, which include such further information as may be necessary to make the required statements not misleading.

49. As a result of the conduct described above, Louie caused Mount Kellett to violate Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client.²

50. As a result of the conduct described above, Mount Kellett violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder, which requires, among other things, investors who previously filed a Schedule 13G with the Commission to instead file a Schedule 13D within ten calendar days once the investor holds the securities with a control purpose or effect.

51. As a result of the conduct described above, Mount Kellett willfully³ violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Louie cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11 promulgated thereunder and Section 206(2) of the Advisers Act.

B. Respondent Mount Kellett cease and desist from committing or causing any violations and any future violations of Section 13(d) of the Exchange Act and Rule 13d-1

² A violation of Section 206(2) of the Advisers Act does not require a showing of scienter but "may rest on a finding of simple negligence." *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

³ 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)).

promulgated thereunder, and Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

C. Respondent Mount Kellett is censured.

D. Respondent Louie shall, within ten (10) calendar days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Respondent Mount Kellett shall, within ten (10) calendar days of the entry of this Order, pay a civil money penalty in the amount of \$160,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the relevant individual or entity 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 Anita B. Bandy, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, 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.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary