UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6428 / September 22, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21704

In the Matter of **AMERICAN INFRASTRUCTURE FUNDS, LLC** **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 American Infrastructure Funds, LLC ("AIM" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the 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 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 finds[1] that

Summary

1. This matter involves three distinct breaches of fiduciary duty by American Infrastructure Funds, LLC ("AIM"), a registered investment adviser to private funds that focus on infrastructure investments. First, AIM violated its fiduciary duty entering into an agreement under which it accelerated a portfolio company monitoring fee without timely disclosure to clients or investors. Second, AIM transferred an asset owned by AIM-advised funds to a newly-formed private fund that AIM also advised without adequately disclosing its conflicts of interest, obtaining investor consent, or allowing investors to liquidate or exit their investment at the end of certain funds' term. The transfer effectively locked up client and investor money into the investment for an additional 11 years. Third, AIM made an AIM-advised fund incur expenses that should have been paid by a fund advised by an affiliated adviser. AIM violated its duty of care obligations by allowing this transaction, which had the practical effect of an undisclosed loan to the fund advised by the affiliated adviser. At all relevant times, AIM also failed to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its receipt of compensation from portfolio companies and transfers of fund assets.

Respondent

2. American Infrastructure Funds, LLC, is a Delaware limited liability company with its principal place of business in Foster City, California. AIM has been registered as an investment adviser with the Commission since 2012. As of March 2023, AIM had approximately $1.3 billion in assets under management.

Other Relevant Entities

3. GEN I Funds, which include American Infrastructure MLP Private Equity Fund, L.P., a Delaware limited partnership formed in 2006, American Infrastructure MLP Associates Fund, L.P., a Delaware limited partnership formed in 2008, and American Infrastructure MLP Fund, L.P., a Delaware limited partnership formed in 2005, were formed by and advised by AIM to make private investments in infrastructure and real property-related assets.

4. GEN II Funds, which include American Infrastructure MLP Fund II, L.P., a Delaware limited partnership formed in 2012, American Infrastructure MLP Founders Fund II, L.P., a Delaware limited partnership formed in 2012, and AIM II Offshore, L.P., a Cayman Islands limited partnership formed in 2013, were formed by and advised by AIM to make private investments in infrastructure and real property-related assets.

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[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.

5. New American Bridges Fund, L.P. ("NABF") is a Delaware limited partnership formed in 2015 by and advised by AIM to make private investments in toll-based bridges.

Background

6. AIM is a private equity adviser and the clients it advises are private funds that make investments in infrastructure and real property-based assets and businesses. Each private fund is governed by a limited partnership agreement ("LPA") that sets forth the obligations of AIM and of its partners, including the funds' commitment to pay AIM management fees and other expenses pursuant to a separate investment management agreement between each fund and AIM. Each fund's LPA establishes a Limited Partnership Advisory Committee ("LPAC") consisting of a number of limited partners. The functions of the LPAC include, inter alia, providing advice and counsel on issues relating to potential conflicts of interest in any transaction or relationship.

7. Many AIM-advised funds own portfolio companies through the funds' investments. AIM typically enters into monitoring agreements with each fund's portfolio company, whereby AIM charges the portfolio company an annual fee due in quarterly installments in exchange for performing various services for that company, including financial, advisory, or consulting. The monitoring fees paid by the portfolio company are revenues to AIM in addition to any fees paid by the private funds to AIM pursuant to their respective LPAs.

Acceleration of Portfolio Company Monitoring Fees

8. In approximately June 2008, GEN I Funds made an investment in a waste service provider (the "Portfolio Company"). At that time, AIM also separately entered into a monitoring agreement with the Portfolio Company, which provided that AIM would obtain financing for and provide the Portfolio Company with additional financial, advisory and consulting services ("Monitoring Agreement"). The Monitoring Agreement provided that in exchange for AIM's services, the Portfolio Company would pay AIM monitoring fees annually. Pursuant to the relevant fund documents, GEN I Funds' investors could receive, and over the course of the investment did receive, a portion of these monitoring fees as an offset to AIM management fees.

9. The Monitoring Agreement did not contain a provision authorizing AIM to accelerate future monitoring fees from the Portfolio Company for the entire contract period if either party terminated the Monitoring Agreement prior to the end of its ten-year term. The Monitoring Agreement automatically renewed for a one-year term annually, unless the Portfolio Company provided a notice of termination to AIM before the renewal date. In addition, GEN I Funds' original 2006 operating documents and private placement memoranda did not contain any disclosures about whether AIM could accelerate monitoring fees for any of its investments, or any of the risks or conflicts of interest that can occur in the event of an acceleration.

10. In August 2017, prior to the expiration of AIM's original Monitoring Agreement with the Portfolio Company, AIM entered into an amended monitoring agreement with the Portfolio Company for another ten-year term (the "Amended Agreement"). The Amended Agreement provided that if either party terminated the contract prior to its expiration, the Portfolio Company would pay an accelerated monitoring fee to AIM that was up to $4.5 million. AIM did

not disclose to GEN I Funds, who owned almost half of the Portfolio Company, or GEN I Funds' LPAC, that it had entered into the Amended Agreement, that it included the accelerated monitoring fee provision, or that this provision created a conflict of interest for AIM.

11. In February 2019, AIM sold the Portfolio Company and terminated the Amended Agreement, triggering the contractual accelerated monitoring fee provision. AIM accelerated $4.5 million in monitoring fees to itself from the Portfolio Company pursuant to the Amended Agreement. A portion of that fee was attributable to GEN I Funds' ownership interest in the Portfolio Company.

12. AIM had a conflict of interest as the recipient of the accelerated monitoring fees from GEN I Funds' Portfolio Company. AIM did not adequately disclose this conflict, nor did it seek advice from the LPAC about the conflict of interest. Further, because of this conflict, AIM could not effectively consent to the receipt of the accelerated fees on behalf of the GEN I Funds.

13. When accelerating the full amount of the monitoring fee upon termination of the Amended Agreement in 2019, AIM also violated its duty of care by failing to consider whether accelerating the fee was in the GEN I Funds' best interest. By the time AIM received the accelerated monitoring fees from the Portfolio Company, the majority of GEN I Funds were no longer paying management fees to AIM. In August 2020, after Commission staff raised the issue, AIM made payments to GEN I Fund investors to reimburse them for some of the accelerated fees.

Transfer of Fund Asset to New Fund

14. From 2010 through the end of 2015, GEN I Funds invested approximately $70 million in a company that purchases and builds toll bridges ("Bridge Portfolio Company"). In June 2016, close to the initial ten-year term of GEN I Funds (expiring 2017), AIM transferred GEN I Funds' Bridge Portfolio Company assets to NABF, a new private fund created and managed by AIM that had a 12-year term (expiring 2028) to raise capital and invest in additional bridge projects. In exchange for the transfer, GEN I Funds, through the Bridge Portfolio Company, became an investor in and received a limited partner interest in NABF, as well as a commitment of ownership of the majority of carried interest in NABF and any management fees AIM earned from NABF in excess of operating expenses.

15. By transferring the Bridge Portfolio Company assets to NABF in exchange for a limited partner interest and a potential portion of NABF's incentive fees, AIM effectively locked up GEN I Funds' investors into the Bridge Portfolio Company investment for an additional 11 years. Although AIM notified the GEN I Funds' LPAC and limited partners about the plan to raise capital for bridge acquisitions through NABF, AIM failed to disclose to investors the full nature of the transaction and the resulting conflicts before transferring GEN I Funds' ownership position in the Bridge Portfolio Company assets to NABF. In particular, AIM failed to fully disclose to GEN I Funds' investors that their investment would be locked up for additional time beyond the original ten-year term, that they had no opportunity to object or exit the investment, and that AIM would receive additional compensation from NABF as a result of transferring the Bridge Portfolio Company assets to it.

16. In addition, AIM breached its fiduciary duty to GEN I Funds by failing to disclose the conflicts of interest associated with, among other things, its role as an adviser to both GEN I Funds and NABF and that AIM could earn fees from NABF. AIM also failed to give GEN I Funds or their limited partners an opportunity to consent or decline the transfer, an offer to liquidate their interest, or any other way to exit GEN I Funds at the close to the initial ten-year term of GEN I Funds.

Undisclosed Loan to Affiliated Fund

17. Between 2017 and June 2018, GEN II Funds incurred approximately $1.3 million in deal expenses while considering a potential investment in post office properties. However, by June 2018, GEN II Funds no longer had sufficient uncommitted capital to pursue the investment.

18. In July 2018, a new fund (the "Postal Fund") was formed with a focus on acquiring privately owned post offices and the Postal Fund was eventually managed by an affiliate adviser of AIM. Because the post office investment was now being considered by the Postal Fund, AIM reimbursed GEN II Funds the approximately $1.3 million in expenses it had previously incurred.

19. In January 2019, AIM allocated the $1.3 million in deal expenses back to the GEN II Funds. AIM noted at the time that the allocation was for "deal expenses" connected to the post office investment, which the Postal Fund was now considering for purchase, and was a liability the Postal Fund owed to GEN II Funds.

20. In June 2019, the Postal Fund paid GEN II Funds $1.3 million to cover the deal expenses that AIM had allocated to the GEN II Funds. Given that the GEN II Funds bore these expenses until then, the transaction had the practical effect of being a loan from the GEN II Funds to the Postal Fund. After Commission staff raised the issue, the AIM-affiliated adviser paid the GEN II Funds interest on the $1.3 million loan.

21. AIM was conflicted in causing GEN II Funds to loan the money to the Postal Fund because the loan benefited a separate fund managed by one of AIM's co-managing members. AIM did not disclose the conflicts of interest involved in the transaction or seek guidance or an opinion from the GEN II Funds' LPAC before engaging in the transaction.

22. AIM also did not undertake a process to determine whether the allocation of expenses was in the best interest of the GEN II Funds and thus violated its duty of care to the GEN II Funds.

23. Although AIM eventually informed the GEN II Funds' LPAC about the transaction, its disclosures to the LPAC were misleading because they failed to adequately disclose the conflicts of interest or AIM's failure to consider whether the transaction was in the GEN II Funds' best interests.

Compliance Deficiencies

24. Since at least 2017, AIM failed to implement its written compliance policies and procedures to prevent violations of the Advisers Act and the rules thereunder concerning

compensation from portfolio companies and related party transactions. AIM failed to implement its policies and procedures regarding its duty of care obligations to always act in its clients' best interests when engaging in conflicted transactions.

25. AIM planned for and obtained accelerated monitoring fees from a portfolio company, but AIM failed to implement its policies and procedures concerning conflicts of interest when doing so. Similarly, AIM failed to implement its policies and procedures to address potential conflicts arising from fund restructurings, such as AIM's transfer of a GEN I Funds' asset to a new fund it advised.

Remedial Efforts

26. In determining to accept the Offer, the Commission considered remedial acts taken by AIM, including its retention of a compliance consultant to review and improve its policies and procedures concerning the issues described above.

Violations

27. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act, but rather a violation 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)). As a result of the conduct described above, AIM willfully violated Section 206(2) of the Advisers Act.[2]

28. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for an investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in the pooled investment vehicle," or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Scienter is not required to establish a violation of Section 206(4) or the rules thereunder. *Steadman*, 967 F.2d at 647. As a result of the conduct described above, AIM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

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[2] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover vs. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir.1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

29. As a result of the conduct described above, AIM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

Undertakings

30. Respondent shall notify past and current investors in GEN I Funds and GEN II Funds of the settlement terms of this Order by sending a copy of this Order to each investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff, within 30 days of entry of this Order.

31. Respondent shall certify, in writing, compliance with the undertaking set forth in paragraph 30 above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Jeremy Pendrey, Assistant Regional Director, Division of Enforcement, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than 60 days from the date of the completion of the undertakings.

32. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

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

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

A. Respondent cease and desist from committing or causing any violations and any future violations Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling $1,645,460 as follows:

(i) Respondent shall pay disgorgement of $373,368, and prejudgment interest of $72,092, consistent with the provisions of this Subsection C.

(ii) Respondent shall pay civil penalties of $1.2 million, consistent with the provisions of Paragraph xii of this Subsection C.

(iii) Within ten [10] days of the issuance of this Order, Respondent shall deposit the disgorgement plus prejudgment interest totaling $445,460 (the "Distribution Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Distribution Fund shall bear the name and the taxpayer identification number of the Distribution Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(iv) Respondent shall be responsible for administering the Distribution Fund to affected investors (i.e., those former and current investors in GEN I Funds who were financially harmed by the practices detailed in Section III, Paragraphs 8-13 (hereinafter, "Affected Investor")), and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(v) Respondent shall distribute from the Distribution Fund to each Affected Investor an amount representing: (a) the financial harm during each relevant period by the practices discussed above, and (b) reasonable interest paid on such amounts, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a de minimis threshold. No portion of the Distribution Fund shall be paid to any Affected Investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

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

Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

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

(viii) Respondent shall disburse all amounts payable to Affected Investors within ninety [90] days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xiv of this Subsection C. Respondent shall notify the Commission staff of the date[s] and the amount paid in the initial distribution.

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

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

b. 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

c. 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 AIM as 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 Jeremy

Pendrey, Assistant Regional Director, Division of Enforcement, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

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

(xi) Within one hundred fifty [150] days after Respondent completes the disbursement of all amounts payable to Affected Investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to Affected Investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Jeremy Pendrey, Assistant Regional Director, Division of Enforcement, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xii) Respondent shall pay the civil penalties to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: within 10 days of the entry of this order, $1,000,000; within 90 days of the entry of this order, $50,000; within 180 days of the entry of this order, $50,000; within 270 days of the entry of this order $50,000; and within 360 days of the entry of this order, $50,000. Payments shall be applied first to post order interest, which accrues pursuant SEC Rule of Practice 600 and pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth

herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. If timely payment is not made in accordance with the schedule above, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

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

b. 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

c. 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 AIM 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 Jeremy Pendrey, Assistant Regional Director, Division of Enforcement, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

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

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

D. 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.

F. AIM shall comply with the undertakings enumerated in Section III above.

By the Commission.

Vanessa A. Countryman
Secretary