UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94967 / May 23, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6033 / May 23, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20869

In the Matter of

Virtua Capital Management, LLC, Quynh Palomino, Jack D. Rose, and Derek Uldricks,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e), 203(f) 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 Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Virtua Capital Management, LLC, Quynh "Quinn" Palomino, Jack D. Rose, and Derek Uldricks ("Respondents").

II.

In anticipation of the institution of these proceedings, Respondents 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, 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 15(b) of the Exchange Act of 1934 and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of

1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds[1] that:

Summary

1. Virtua Capital Management, LLC, an Arizona-registered investment adviser, Quynh Palomino, Jack D. Rose, and Derek Uldricks, failed to adequately disclose conflicts of interest relating to their management of seven private investment funds (each, a "Fund" and collectively, the "Funds") from early 2017 through 2019. During this period, Respondents managed numerous real estate projects and invested Fund assets primarily in those affiliated-real estate investments. Although the affiliated projects were generally the type of investments that were consistent with the Funds' investment objectives, the practice of investing nearly exclusively in affiliate projects presented conflicts of interest that were not adequately disclosed. In addition, although the offering documents disclosed some fees paid to affiliates, other fees were not disclosed. As a result of these undisclosed conflicts and fees, Respondents' disclosures were misleading and Respondents breached their fiduciary duty to the Funds.

Respondents

2. Virtua Capital Management, LLC ("VCM" or "the Adviser") is headquartered in Scottsdale, Arizona, and has been an Arizona-registered investment adviser since August 2018. Prior to that, VCM was an exempt reporting adviser with the Commission and Arizona. VCM is part of a network of related entities and affiliates ultimately owned by Virtua International Holdings, LLC (collectively, "Virtua"). VCM provides investment advisory services to twenty private funds as the advisory arm of Virtua International Holdings ("VIH"). VCM expressed that it intends to exit the investment advisory business, at which point it plans to either transition its fund management role to a third-party investment adviser or wind-down the funds under its control in an orderly manner.

3. Quynh "Quinn" Palomino ("Palomino") is a founder and principal of VCM, and has control over VCM through her majority ownership stake in VIH. Palomino is 48 years old and lives in Milton, Georgia. Palomino advised the Funds with respect to investments in securities and received compensation from Virtua for these services.

4. Jack D. Rose ("Rose") has served as the Chief Global Strategist at VIH, at times as a salaried employee and other times as a fee-based consultant. Rose is 59 years old and lives in Milton, Georgia. Rose and Palomino are domestic partners. Rose advised the Funds with respect to investments in securities and received compensation from Virtua for these services.

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

5. Derek Uldricks ("Uldricks") was the president and a manager of VCM from January 2017 to December 2020. He holds Series 7, 65, and 66 licenses. In his capacity at VCM, he advised the Funds with respect to investments in securities and received compensation from Virtua for these services. He has also been a registered representative with a dually-registered broker-dealer and investment adviser that previously provided services to VCM, since November 2019. Uldricks is 36 years old and lives in Scottsdale, Arizona.

Relevant Entity

6. Virtua International Holdings, LLC is a Delaware limited liability company formed on August 9, 2018, and is headquartered in Scottsdale, Arizona. VIH is the parent company of all of the entities in the Virtua enterprise, including VCM. Palomino is the controlling owner of VIH.

Background

7. VCM serves as the investment adviser for various Virtua-sponsored private funds. These funds make securities investments, including financial instruments secured by real estate and private equity real estate investments, and other investments in commercial real estate projects. Various Virtua affiliates provide a range of services to these projects, such as property and asset management, real estate brokerage services, and project management and vertical and horizontal development. The Virtua-sponsored private funds did not have a formal investor committee or other independent entity that was authorized to approve conflicts of interest on the funds' behalf.

8. Since its inception in 2014, Virtua has raised about $100 million through twenty private fund offerings. Palomino, as the principal of VIH, has control over VCM's day-to-day affairs and provides investment advice to the funds managed by VCM. Rose, as the Chief Strategist to VIH, was a key decision-maker regarding the funds' investment activities and was closely involved with nearly every decision on how fund assets would be invested. Uldricks, as the president and a manager of VCM, was involved with investment decisions for the funds VCM managed. Palomino, Rose, and Uldricks each had multiple interactions and communications with investors and prospective investors.

9. This matter arises out of the conduct of VCM, Palomino, Rose, and Uldricks beginning in early 2017, with respect to seven Funds that VCM managed, which are pooled investment vehicles as defined in Advisers Act Rule 206(4)-8(b): Virtua High Growth Fund III, LLC ("VHGF III"), Virtua High Growth Fund III HNW, LLC ("VHGF III HNW"), Virtua High Growth Fund IV, LLC ("VHGF IV"), Virtua Income Fund North America I, LLC ("VIFNA"), Virtua Land Acquisition Fund I, LLC ("VLAF I"), Virtua Land Acquisition Fund II, LLC ("VLAF II"), and Virtua Opportunity Zone Fund I, LLC ("VOZF I").

Respondents Failed to Adequately Disclose Conflicts of Interest

10. Respondents, through Private Placement Memoranda ("PPMs"), Operating Agreements ("OAs"), and marketing materials, gave the appearance that investments by the Funds would be sourced through the open-market using Virtua's real estate brokerage company and its

"data base and opportunity monitoring capabilities," as well as through other investors, lending institutions, and other sources. Ultimately, however, these Funds invested in projects that were nearly exclusively managed by Respondents. The practice of investing Fund assets nearly exclusively in affiliated projects presented significant undisclosed conflicts of interest that at times benefitted Respondents over the Funds.

11. First, when selecting investments for the Funds, Respondents had a financial incentive to select projects they managed over other possible non-affiliated investments, as this would help to ensure that Virtua projects were funded. For example, on one occasion, Uldricks suggested that VHGF III purchase VHGF I's investment in a Virtua affiliate noting that, "If VHGF III [is] in a position to purchase" the investment "so that we can make a distribution to VHGF I, that would be a good move." Notably, this investment was consistent with VHGF III's investment objectives and was not the first investment by VHGF III in the project. But, the timing of this particular investment, which allowed VHGF I to satisfy obligations owed to its own investors, presented a conflict of interest that should have been disclosed.

12. At times, Palomino directed Funds to make investments that were within the Funds' investment objectives, but appear to have been potentially influenced by the capital needs of other affiliate-managed projects. For example, Palomino instructed VHGF III to invest in a Virtua affiliate ("Affiliate 1"), which owed money to another Virtua entity that provides real estate brokerage services ("Affiliate 2"). She directed that VHGF III send Affiliate 1 "$40,000…to cover for [Affiliate 2] fees… [Affiliate 2] will be using this to cover for payroll this week." She also directed VHGF III to invest another $96,000 in Affiliate 1 to enable it to pay additional fees owed to Affiliate 2, noting that Affiliate 2 would use the $96,000 "for…bonuses" to Affiliate 2 employees. While VHGF III made a series of investments in Affiliate 1, Respondents did not adequately disclose that such investments benefited Virtua affiliates and the conflicts of interest presented by such investments.

13. In another instance, Rose instructed via email that $35,000 from VHGF III should be transferred to another Virtua affiliate ("Affiliate 3") as an investment, so that Affiliate 3 could pay its outstanding bill to a third-party entity that Rose controlled ("Company 1"). Thereafter, Rose sent instructions to Company 1 to "transfer $25,000 to my personal account when the [Affiliate 3] dollars come in." Although this was just one of a series of investments that VHGF III made in Affiliate 3, and the invoices for Company 1 appear to have been legitimate, Respondents did not disclose the conflicts presented by the benefits to Rose.

14. The conflicts of interests also resulted from certain Funds purchasing investments in land from Virtua affiliates and Funds at appraisal prices based on underlying conditions that had not yet fully occurred. Because Respondents managed the parties on both sides, these affiliated transactions were subject to inherent conflicts of interest that Respondents were obligated to disclose. For example, Respondents caused VOZF I to make an equity investment of over $2.1 million as the majority owner in a Virtua affiliate ("Affiliate 4"). Respondents, who managed Affiliate 4, caused it to purchase an option to buy a plot of land from VLAF I, for which VLAF I was conducting the entitlement and platting process. A third-party appraisal was commissioned in connection with the purchase transaction. The appraisal provided an "As-Is Valuation" for the

property that valued the property in its current state. It also provided a "Hypothetical Market Value," which assumed the hypothetical condition that the property had an approved and effective preliminary plat for development. The "Hypothetical Market Value" was $700,000 more than the "As-Is Valuation."

15. At the time that VLAF I sold the land option to Affiliate 4, the land had not yet satisfied the hypothetical condition assumed in the "Hypothetical Market Value" appraisal. Yet, Respondents chose to cause Affiliate 4 to purchase the land option for an amount that was greater than both the "Hypothetical Market Value" and the "As-Is Valuation." Thus, Affiliate 4, and VOZF I as its majority owner, bore the risks and costs associated with the entitlement process, including the risk that the condition upon which the Hypothetical Market Value was based would not be met.

16. Finally, Respondents also directed Funds to make debt investments in real estate projects managed by Respondents, in the form of unsecured, interest bearing promissory notes that mostly accrued interest until the notes were paid off. These debt investments were generally within the Funds' objectives, and were the type of distressed debt investments described as the strategy of the Funds. But Respondents extended the notes at maturity, rather than calling the notes. For example, since 2017, Respondents caused VHGF III to invest in promissory notes issued by various affiliates totaling more than $5 million, accounting for over 72% of its investments on a cost basis at one time. All but one of these notes were extended multiple times. Similarly, Respondents caused VHGF IV to invest in five promissory notes issued by various affiliates, totaling more than $2.7 million, accounting for over 71% of its investments on a cost basis at one time. Three of the notes were extended multiple times. These transactions presented a conflict of interest, which Respondents failed to adequately disclose.

Respondents Failed to Adequately Disclose Affiliate Fees

17. Respondents failed to disclose all of the types and magnitude of fees that Virtua affiliates would charge to the projects in which the Funds invested. Instead, the PPMs and OAs disclosed only some of the numerous services Virtua affiliates provided to these projects. The Funds' PPMs included a section describing compensation that may be paid to affiliates, and also referred investors to an exhibit attached to the PPMs for a more extended and detailed discussion of affiliate compensation. The exhibit included a table that described fees that certain affiliates may be paid. Respondents testified that they believed the disclosures were adequate. Nevertheless, and as reflected in the updated disclosures of November 2019, certain services that Virtua affiliates provided, along with the resulting fees, were not included. These undisclosed affiliate fees were material, and included loan guarantee fees, consultation fees, acquisition fees, sales fees, and others. The disclosures were misleading because they led investors and prospective investors to believe that all such fees had been disclosed. Without this information, investors and prospective investors were unable to assess the nature and total magnitude of Virtua-affiliate fees, nor could they give informed consent to the additional conflicts of interest the undisclosed fees created.

Violations

18. As a result of the conduct described above, Respondents willfully[2] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

19. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading with respect to any investor or prospective investor in the pooled investment vehicle. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *Steadman*, 967 F.2d at 647.

Disgorgement

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

Undertakings

21. Notice to Investors. Within thirty (30) days of the entry of this Order, via mail, e-mail, or such other method as may be not unacceptable to the Commission staff, together with a

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[2] "Willfully," for purposes of imposing relief under 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

cover letter in a form not unacceptable to the Commission staff, VCM shall provide a copy of the Order to all current and former investors in the Funds.

22. Certification of Compliance. VCM shall certify, in writing, compliance with the undertaking set forth above. The certification shall 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 VCM agrees to provide such evidence. The certification and supporting material shall be submitted to Armita Cohen, Assistant Director, Division of Enforcement, at cohenar@sec.gov, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

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

B. Respondents are censured.

C. Respondents shall pay disgorgement, prejudgment interest, and civil monetary penalties totaling $2,099,089 as follows:

(i) Respondent VCM shall, within one-hundred and twenty (120) days of the entry of this Order, pay disgorgement of $1,543,735 and prejudgment interest of $170,354, consistent with the provisions of this Subsection C. Payment shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600. Prior to making payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make payment by the date agreed and/or in the amount agreed as set forth herein, 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.

(ii) Within twenty-one (21) days of the entry of this Order and consistent with the provisions of this Subsection C: (1) Respondent VCM shall pay a civil money penalty in the amount of $150,000; (2) Respondent Palomino shall pay a civil money penalty in the amount of $100,000; (3) Respondent Rose shall pay a civil money penalty in the amount of $75,000; and (4) Respondent Uldricks shall pay a civil money penalty in the amount of

$60,000. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investor accounts. 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.

(iv) Consistent with the provisions of this Subsection C, Respondents shall deposit $2,099,089 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. §3717.

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

(vi) Respondent VCM shall pay from the Fair Fund to each current and former investor account that held shares of the Funds at any time during the period March 28, 2017 through December 31, 2019 (the "Relevant Period") (collectively, the "affected investor accounts"), an amount representing the amount of each affected investor account's proportion of management fees paid by the Funds during the Relevant Period and reasonable interest at the Short-term Applicable Federal Rate plus three percent (3%), 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. This Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondents, or any of VCM's current or former officers or directors, or any of VCM's current or former affiliates, has a financial interest.

(vii) Respondent VCM shall, within ninety (90) days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, VCM, along with any third-parties or professionals retained by VCM to assist in formulating the methodology for its Calculation and/or administration of the distribution, shall make themselves available, and shall require any third-parties or professionals retained by VCM 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. VCM 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 VCM's proposed Calculation or any of its information or supporting documentation, VCM 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 VCM of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent VCM 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. VCM shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(ix) Respondent VCM shall complete the disbursement of 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 xiii of this Subsection C. VCM shall notify the Commission staff of the date[s] and the amount paid in the initial distribution.

(x) If VCM is unable to distribute or return any portion of the Fair 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 VCM's control, VCM 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 xii of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

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

ii. VCM 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

iii. VCM 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 VCM as the 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 Armita Cohen, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent VCM shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fair 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). VCM may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by VCM and shall not be paid out of the Fair Fund.

(xii) Within 45 days after Respondent VCM completes the disbursement of all amounts payable to affected investors, VCM shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. VCM shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (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 VCM has made payments from the Fair 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 VCM and the file number of these proceedings to Armita Cohen, Assistant Director, Division of Enforcement, at cohenar@sec.gov. VCM 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.

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

D. Respondent VCM shall comply with the undertakings enumerated in Sections III.21 and III.22 above.

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 Palomino, Rose, and Uldricks, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Palomino, Rose, and Uldricks 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 Palomino, Rose, and Uldricks 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.

Vanessa A. Countryman
Secretary