

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17740

In the Matter of :

Augustine Capital Management, :
LLC (F/K/A Augustine Capital :
Management, Inc.), John T. :
Porter, and Thomas F. :
Duszynski, CPA, :

Respondents. :

PROPOSED PLAN OF DISTRIBUTION

1. *Purpose and Background.* This Proposed Plan of Distribution (the “Plan”) has been developed pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan proposes a distribution of the funds collected from Augustine Capital Management, LLC (f/k/a Augustine Capital Management, Inc.) (“ACM”), John T. Porter (“Porter”), and Thomas F. Duszynski, CPA (“Duszynski”) (collectively, the “Respondents”) to investors in the Augustine Fund, L.P. (the “Fund”), a private fund managed by Respondents.

On December 20, 2016, the Securities and Exchange Commission (“Commission”) instituted proceedings pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against ACM; and pursuant to Sections 203(f) and 203(k) and Section 9(b) of the Investment Company Act against Porter and Duszynski.¹ The Commission alleged, among other things, that Respondents J. Porter and Duszynski, together with Brian D. Porter, and ACM, in turn, acted as an investment adviser for the Fund. The Respondents caused the Fund to engage in conflicted transactions without disclosure to, or the consent of, the Fund’s investors. Respondents invested in and lent money to two entities in which the ACM owners had an interest. Respondents also lent an ACM owner, Duszynski, money to fund his investment in a business venture with other ACM owners that later failed, saddling the Fund and its investors with the resulting losses. Respondents also collected nearly \$1 million in investor funds by charging the Fund for ACM’s expenses. Respondents also provided investors with account statements that did not accurately reflect the market value of the underlying investments.

¹ Advisers Act Rel. No. 4591 (Dec. 20, 2016).

On October 26, 2017, the Commission issued an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 and Instituting Public Administrative Proceedings, and Imposing Sanctions Pursuant to Rule 102(e) of the Commission's Rules of Practice as to Thomas F. Duszynski, CPA (the "Order").² The Order found, among other things, that Respondents caused the Fund to engage in conflicted transactions without disclosure to, or the consent of, the Fund's investors; that the Respondents invested in and lent money to two entities in which the ACM owners had an interest (the entities are FT Investing LLC, which resulted in a \$120,000 loss³ to investors, and FT Trading, LLC, where Respondents made a series of undocumented loans) and that Respondents also lent \$250,000 to Duszynski to fund his investment in a business venture and that Duszynski defaulted on the loan; that Respondents used nearly \$950,000 in investor funds to pay for ACM's expenses; that Respondents unilaterally determined which investments were allocated to which investors rather than basing their determination on the time when those investments were made into the Fund as discussed in the Fund's offering documentation; and that Respondents provided investors with account statements that did not accurately reflect the value of certain underlying investments, which were overly inflated as those investments were bankrupt or worthless investments, that resulted in investors overpaying advisory fees.⁴ In addition, the Fund made transfers to Porter totaling more than \$373,000 even though Porter was not owed these amounts as either salary or a profit distribution and he did not have sufficient available cash in his account in the Fund to cover these withdrawals.

The Order requires the Respondents to cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The Order bars Porter and Duszynski from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibits Porter and Duszynski from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to apply for reentry after three (3) years. The Order censures ACM and suspends Duszynski from appearing and practicing before the Commission as an accountant. The Respondents also were ordered to pay, jointly and severally, disgorgement of \$685,514.73 and prejudgment interest of \$42,791.38. The Order further required ACM, Porter, and Duszynski to pay civil money penalties in the amount of \$150,000.00, \$75,000.00, and \$50,000.00, respectively. The Order created a Fair Fund, pursuant Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds paid by the Respondents (the "Fair Fund").

² Advisers Act Rel. No. 4800 (Oct. 26, 2017).

³ According to investigative staff, Respondents had invested \$500,000 in FT Investing, LLC, which then invested in PIPEs (Private Investment in Public Equity). Because the PIPEs did not perform well, Respondents liquidated the investments in FT Investing, LLC.

⁴ Respondents ultimately reimbursed the funds for the loans made to FT Trading and Duszynski and thus there is no investor harm attributed to those loans in the Plan.

In accordance with the Order, the Respondents have paid a total of \$1,003,306.11 in disgorgement, prejudgment interest, and civil money penalties to the Commission.

The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit in a Commission designated interest-bearing account at the United States Department of Treasury (“U.S. Treasury”) Bureau of Fiscal Services (“BFS”). Other than potential interest income from the BFS investment, the Commission does not anticipate that the Fair Fund will receive any additional funds. If any additional funds are received, those funds will be sent to the U.S. Treasury and not distributed at the discretion of the Fund Administrator. All BFS fees will be paid by the Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

Under the Plan, the Fair Fund, plus accumulated interest and earnings thereon, less any reserve for taxes, fees or other expenses of administering the Plan (the “Net Fair Fund”), will be distributed to Eligible Investors, as defined below, as set forth in paragraph 8 below.

2. *Tax Administrator.* The Commission has appointed Miller Kaplan Arase LLP as the tax administrator (“Tax Administrator”) of the Fair Fund,⁵ pursuant to Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds.⁶ The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance and any other work ordered to the Tax Administrator by the Commission staff. The Tax Administrator will be compensated for all reasonable costs and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission. The Fair Fund’s taxes will be paid out of the Fair Fund.

3. *Fund Administrator.* Michael S. Lim, attorney adviser in the Commission’s Division of Enforcement’s Office of Distributions, is the proposed administrator of the Fair Fund (the “Fund Administrator”). As a Commission employee, the Fund Administrator receives no compensation from the Fair Fund for his services in administering the Fair Fund. In accordance with Rule 1105(c) of the Rules, 17 C.F.R. § 201.1105(c), no bond is required since the Fund Administrator is a Commission employee. In carrying out his duties, the Fund Administrator may be assisted by other Commission staff acting under his supervision.

The Fund Administrator will, among other things: oversee the administration of the Fair Fund, obtain mailing information for the Eligible Investors, distribute money from the assets of the Fair Fund in accordance with the Plan, resolve disputes, prepare a final accounting with assistance from the Tax Administrator, and provide the Tax Administrator with funds to pay tax liabilities and tax compliance fees and costs. The Fund Administrator may be removed at any time by order of the Commission or hearing officer.

⁵ Exchange Act Rel. No. 82330 (Dec. 14, 2017).

⁶ Exchange Act Rel. No. 81057 (June 30, 2017).

4. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

5. *No claims-made process.* The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

6. *Definitions.* The following definitions apply to the terms as used in the Plan:

(a) **Distribution Payment** is the payment made to an Eligible Investor in accordance with this Plan.

(b) **Eligible Investor** is any Investor who suffered a Net Harm Amount, pursuant to the methodology herein, and who is not (i) an Unresponsive Investor, (ii) one of the Respondents, or (iii) an entity controlled by any of the Respondents.

(c) **Fair Fund** is comprised of the disgorgement, prejudgment interest, and civil penalties paid by the Respondents in the captioned matter.

(d) **Investor** refers to an investor in the Fund from January 1, 2012 to December 31, 2015.

(e) **NAV** refers to Net Asset Value.

(f) **Net Fair Fund** is the Fair Fund, plus accumulated interest earned thereon, less taxes and the fees and expenses of administering the Plan.

(g) **Net Harm Amount** is the sum of each Investor’s NAV Expense Amount, Inflation Expense Amount, Porter Withdrawal Amount, and FT Investing LLC Amount (as defined in paragraph 8 below).

(h) **Unresponsive Investor** is (i) any Investor from whom information is sought in the Plan Notice and/or directly by the Fund Administrator, and who does not timely provide that information; or (ii) any Investor who the Fund Administrator cannot locate through reasonable efforts. For purposes of this Plan, locating Investors through the use of commercial databases regularly available to the Fund Administrator constitutes “reasonable efforts.”

7. *Specification of Eligible Investors.* The Fund Administrator will distribute the Net Fair Fund to those Eligible Investors that have been harmed by the conduct described in the Order. Based on information obtained during the Commission’s investigation, Commission staff has identified forty-five (45) Eligible Investors.

8. *Methodology for Determining Distribution Payments.* The Fund Administrator determined the amount to be distributed to each potentially Eligible Investor by using information collected by Commission staff to calculate each affected Investor's Net Harm Amount. An Investor's Net Harm Amount is calculated as the sum of each Investor's FT Investing LLC Amount, Inflation Expense Amount, NAV Expense Amount, and/or Porter Withdrawal Amount:

(a) An Investor's FT Investing LLC Amount is an Investor's investment amount in FT Investing LLC, less any amounts paid to the Investor in connection with the liquidation. If an Investor's FT Investing LLC Amount is less than zero, it will be deemed to be zero.

(b) An Investor's Inflation Expense Amount is an Investor's share, based on an Investor's holdings in a quarter relative to the total size of the Fund in that quarter, of the quarterly additional expenses caused by the overstatement of the Fund's NAV due to ACMs' failure to write off bankrupt and worthless investments. If an Investor's Inflation Expense Amount is less than zero, it will be deemed to be zero.

(c) An Investor's NAV Expense Amount is an Investor's share, based on an Investor's holdings in a quarter relative to the total size of the Fund in that quarter, of the quarterly expenses paid by the Investor in excess of 1% of the Fund's NAV. If an Investor's NAV Expense Amount is less than zero, it will be deemed to be zero.

(d) An Investor's Porter Withdrawal Amount is an Investor's share, based on the Investor's holdings in each quarter relative to the total size of the Fund in that quarter, of the improper withdrawals made by Porter in each quarter of 2012 and 2013 in excess of the \$175,000 per year that he was entitled to receive as his salary. If an Investor's Porter Withdrawal Amount is less than or equal to zero, it will be deemed to be zero.

Eligible Investors who suffered a Net Harm Amount will receive a Distribution Payment. Because the total of all the Eligible Investors' Net Harm Amounts is less than the Net Fair Fund, the Fund Administrator anticipates the Fair Fund will be able to pay each Eligible Investor their Net Harm Amount in full, plus reasonable interest.⁷

Based on this methodology, there are approximately forty-five (45) Eligible Investors identified to receive Distribution Payments, if not deemed an Unresponsive Investor. The distribution will total approximately \$898,689.35, and the Distribution Payments are intended to fully compensate each investor's harm.

In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund. It is anticipated that there will be one (1) distribution to the Eligible Investors.

⁷ "Reasonable interest" is calculated using the short-term Applicable Federal Rate, compounded quarterly from the end of each calendar quarter in which an Eligible Investor suffered losses through March 31, 2019.

9. *Procedures for Locating and Notifying Eligible Investors.* Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Fund Administrator has identified forty-five (45) Eligible Investors. Within thirty (30) days of the Commission's approval of the Plan, the Fund Administrator will send each Eligible Investor a notice by electronic mail, United States Postal Service, or other mail delivery service regarding the Commission's approval of the Plan, including as appropriate, a statement characterizing the distribution, a proposed distribution payment and how the payment was calculated, a link to the Plan on the Commission's website and instructions for requesting a copy of the Plan, the number assigned to that Eligible Investor, a description of the tax information reporting and other related tax matters, specification of the information required by the Fund Administrator, and the contact information of the Fund Administrator to contact with questions regarding the distribution (the "Plan Notice"). Eligible Investors must provide the information requested in the Plan Notice, as instructed therein, to maintain their status as an Eligible Investor.

The Fund Administrator will coordinate with the Tax Administrator to request contact and other information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund, including compliance with the Foreign Account Tax Compliance Act ("FATCA").

Eligible Investors will be asked to confirm the Distribution Payment amount or provide documentation if they disagree with the calculated Distribution Payment amount. The Fund Administrator must receive a written communication detailing the dispute along with any supporting documentation. This can be done by setting forth in detail the basis for the objection, including at the end of the statement (if true) the phrase: "I declare under penalty of perjury that the foregoing is true and correct," and signing and dating the document. All objections submitted pursuant to this paragraph must be postmarked within sixty (60) days of approval of the Plan and be in accordance with the instructions set forth in the Plan Notice, and must include current contact information, including a telephone number and (if applicable) an electronic mail address for the objecting person. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation. Within ninety (90) days of receipt of the written dispute, the Fund Administrator will notify the Eligible Investor of his resolution of the dispute, which shall be final.

10. *Procedures to Request Plan Notice.* A person who does not receive correspondence from the Fund Administrator and believes that he or she should have received correspondence after becoming aware of the Plan must submit documentation to the Fund Administrator in order to establish that the person is in fact an Eligible Investor. Such documentation must be submitted by receipted mail to the address below:

Michael Lim
Attorney Adviser
United States Securities and Exchange Commission
Trial Unit-Office of Distributions
100 F St, NE Mail Stop 5876
Washington, DC 20549

11. *Returned Mail and Unresponsive Investors.* If correspondence is returned as undeliverable within sixty (60) days of approval of the Plan, the Fund Administrator will make all reasonable efforts to ascertain an Eligible Investor's correct address. If a new address is ascertained, the Fund Administrator will resend the correspondence to the Eligible Investor's new address within thirty (30) days of receipt of the returned correspondence. If the correspondence is returned again, the Eligible Investor will be deemed an Unresponsive Investor and will be removed from the distribution.

If an Eligible Investor fails to provide to the Fund Administrator all information requested in the Plan Notice within sixty (60) days of approval of the Plan, the Fund Administrator shall make two (2) attempts to contact the Eligible Investor telephonically or by email. If an Eligible Investor fails to respond to the Fund Administrator's contact attempts within seven (7) days of the Fund Administrator's last contact attempt, such Eligible Investor will be deemed an Unresponsive Investor and will not be eligible for a distribution under the Plan. Any Distribution Payment preliminarily allocated to that Investor will be returned to the United States Treasury.

12. *Distribution Timing.* The Fund Administrator will use his best efforts to start the Commission disbursement approval process within one hundred fifty (150) days of the Plan's approval.

13. *Validation and Approval of Disbursement of the Fair Fund.* The Fair Fund distribution to Eligible Investors will be implemented by the Commission and disbursed through BFS. Checks will be mailed or distribution payments will be electronically transferred to each Eligible Investor as instructed by the Fund Administrator. The Fund Administrator will compile the payee information and prepare a payment file in a Commission-approved format for submission to BFS. Consistent with Rule 1101(b)(6) of the Rules, 17 C.F.R. § 201.1101(b)(6) the Fund Administrator will obtain an order from the Commission to disburse the Fair Fund.

14. *Uncashed Checks.* The Fund Administrator will work with BFS to obtain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator will use best efforts to obtain additional information sufficient to reissue and/or re-send the uncashed checks. The Fund Administrator also is responsible for accounting for all payments. Checks issued by BFS will state on their face that they are valid for one (1) year. The amount of all uncashed checks will be sent to the U.S. Treasury as residual.

15. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan. If there are any changes to the Plan that are determined to be material by the Fund Administrator and Commission staff, Commission approval is required prior to implementation by amending the Plan. For good cause shown, the Fund Administrator may extend any of the procedural dates set forth in the Plan if agreed upon by the Commission staff.

16. *Residual Account.* A residual account within the Fair Fund is established for any amounts remaining after distribution of the Net Fair Fund to Eligible Investors under the Plan. The residual account may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, from checks that were not delivered or from funds returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties. All funds remaining in the residual account will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

17. *Accountings.* Upon final distribution to Eligible Investors and the payment of all taxes, fees, and expenses, the Fund Administrator will submit a final accounting for approval by the Commission prior to termination of the Fair Fund and the discharge of the Fund Administrator. No interim accountings will be submitted.

18. *Termination of the Fair Fund.* Upon final distribution of the Net Fair Fund to Eligible Investors, the Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the Commission. The Fair Fund shall be eligible for termination after all of the following have occurred: (a) a final accounting, in the Commission's standard accounting format, has been submitted by the Fund Administrator, and has been approved by the Commission; and, (b) all taxes and fees and expenses have been paid. When the Commission has approved the final accounting, the Commission staff shall seek an order from the Commission to approve the: (a) transfer of the residual and any funds returned to the Fair Fund in the future to the U.S. Treasury; (b) termination of the Fair Fund; and (c) discharge of the Fund Administrator.

19. *Notice of the Proposed Plan of Distribution and Opportunity for Comment.* Notice of the Proposed Plan of Distribution and Opportunity for Comment (the "Notice") will be published on the Commission website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File No. 3-17740" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.