**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**
**Release No. 9275 / November 10, 2011**

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 65726 / November 10, 2011**

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 3313 / November 10, 2011**

**INVESTMENT COMPANY ACT OF 1940**
**Release No. 29859 / November 10, 2011**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-14619**

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| **In the Matter of**<br><br>**WESTERN PACIFIC CAPITAL MANAGEMENT, LLC AND KEVIN JAMES O'ROURKE,**<br><br>**Respondents.** | **ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 NOTICE OF HEARING** |

## 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 8A of the Securities Act of 1933 ("Securities Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), 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 Western Pacific Capital Management, LLC ("Western Pacific"), and pursuant to Section

8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act against Kevin James O'Rourke ("O'Rourke", and together with Western Pacific, "Respondents").

## II.

After an investigation, the Division of Enforcement alleges that:

### A. SUMMARY

1. This matter involves misconduct by Western Pacific, a registered investment adviser, and its sole owner and principal, O'Rourke, for failing to disclose a conflict of interest, misusing client assets to benefit the adviser, and repeatedly making material misrepresentations to clients.

2. In 2005 and 2006, Western Pacific served as a placement agent for Ameranth, Inc. ("Ameranth") for an unregistered offering of Ameranth stock. In exchange, Western Pacific received a success fee of 10% of the capital it raised. At the time, neither Western Pacific nor O'Rourke were registered brokers or affiliated with a registered broker. O'Rourke urged many Western Pacific clients to invest in Ameranth without disclosing that Western Pacific would financially benefit from their investments. O'Rourke also advised clients to invest in a hedge fund, the Lighthouse Fund, LP ("Lighthouse" or the "Fund"), without disclosing that the Fund would initially invest primarily in Ameranth, for which Western Pacific would receive a 10% success fee. In all, Western Pacific earned $482,745 in success fees as a placement agent for Ameranth.

3. Between 2006 and 2008, O'Rourke misused Fund assets and lied to his clients who invested in the Fund. To resolve a dispute with a client who no longer wanted his $800,000 of Ameranth stock, O'Rourke caused the Fund to buy some of the stock and permitted the client to use the remainder of the stock to fund the client's investment in the Fund. O'Rourke ultimately redeemed the client's interest in the Fund for cash. In addition, in response to client inquiries regarding the Fund's liquidity, O'Rourke repeatedly misstated that the Fund was liquid or had less than 25% of its holdings in illiquid securities, when in fact approximately 90% of the Fund's assets were illiquid.

### B. RESPONDENTS

4. **Western Pacific** is a California limited liability corporation with its principal place of business in Del Mar, California. Western Pacific registered with the Commission as an investment adviser effective May 13, 2009 and has approximately $75 million in assets under management in 250 accounts. From June 2004 until it registered with the Commission, Western Pacific was an investment adviser registered with the State of California.

5. **O'Rourke** is Western Pacific's founder, president, and sole control person. At all relevant times, O'Rourke was responsible for the management of Western Pacific's business. O'Rourke was a registered representative with various registered brokers from 1987 through 2001. In 1993, the NASD censured O'Rourke and ordered him

to pay a $5,000 fine for forging a client's signature based on her oral authorization to liquidate a security.

## C. OTHER REVELVANT ENTITIES

6. **Lighthouse** is a California limited partnership formed in 2005, with its principal place of business in Del Mar, California. Lighthouse is an unregistered pooled investment vehicle.

7. **Ameranth** is a Delaware corporation formed in 1996, with its principal place of business in San Diego, California. Ameranth is not a public company. Ameranth developed and licensed software for the hospitality, financial services, and healthcare industries.

## D. BACKGROUND

8. In 2005 and 2006, Ameranth conducted an unregistered offering of securities (the "Offering"). Pursuant to the Offering, Ameranth offered three million shares of Series D Preferred Stock, with a purchase price of two dollars per share. For each two dollars invested, the investor received one Series D Preferred Share ("Ameranth Stock") and a warrant to purchase a single share of Ameranth common stock. The offering memorandum states that the investment is speculative and high-risk, and that in the company's ten-year history it had experienced only cumulative net losses. The offering memorandum also disclosed that two placement agents, which were not identified, would receive a 10% success fee on the gross proceeds they raised.

9. Western Pacific was one of the two placement agents Ameranth retained for the Offering. As such, it received a success fee of 10% of the capital it raised. As a placement agent, Western Pacific collected investor questionnaires, responded to investor questions, and confirmed that investor subscriptions had been accepted so that the investor could wire money to the company. Western Pacific was also involved with developing the terms of the Offering. Western Pacific has never been registered as a broker. O'Rourke, who offered and sold the Ameranth Stock on Western Pacific's behalf, has not been affiliated with a registered broker since 2001.

10. From June 2005 through November 2006, Western Pacific raised $4,827,445 for the Offering, and Ameranth paid Western Pacific $482,745 in success fees. O'Rourke, through meetings, telephone conversations, and emails, advised individual Western Pacific clients to invest in Ameranth. Of the $482,745 in success fees Western Pacific received, $250,495 was attributable to individual clients purchasing Ameranth Stock and $200,000 was attributable to O'Rourke investing $2 million of Lighthouse assets in Ameranth. The $482,745 in success fees Western Pacific received were substantial when compared to its management fees. In 2005 and 2006, Western Pacific earned management fees totaling $557,865.

11. In early 2005, O'Rourke formed Lighthouse. From mid-2005 through mid-2008, the Fund's general partner paid Western Pacific for management services provided to the Fund.

12. In June 2005, the Fund received its first investments from four Western Pacific clients who contributed $2,015,925. The Fund continued to raise money from additional investors, but the Fund's value never exceeded $3.1 million. The Fund's investors were all clients of Western Pacific. Following their respective investments in the Fund, all but one of the Fund's investors maintained separate accounts over which Western Pacific had discretionary authority. The client that did not maintain a separate account ("Client A") invested all of the money Western Pacific had previously managed for him in the Fund.

## E. WESTERN PACIFIC AND O'ROURKE FAILED TO DISCLOSE THAT WESTERN PACIFIC WOULD RECEIVE A 10% SUCCESS FEE

13. Western Pacific and O'Rourke, with scienter, failed to disclose to each of their clients, prior to their participation in the Offering that Western Pacific would receive a 10% success fee. Such information would have been material to a reasonable investor in deciding whether to participate in the Offering.

14. None of the written disclosures available to the clients made clear that Western Pacific had a conflict of interest when advising them to purchase Ameranth Stock. Ameranth's offering documents disclosed that a success fee would be paid to two "placement agents," but did not identify the placement agents. Neither Western Pacific nor O'Rourke provided a separate, written disclosure regarding the firm's receipt of the success fee.

15. O'Rourke also raised approximately $2 million for Lighthouse from four advisory clients without disclosing his conflict of interest. Before raising funds for Lighthouse, Western Pacific agreed to purchase $2 million in Ameranth Stock. From June 17 through June 30, 2005, O'Rourke raised the first $2 million for the Fund from four Western Pacific clients. Immediately thereafter, O'Rourke transferred $2 million to Ameranth. As a result, Western Pacific received $200,000 in success fees due to Lighthouse's $2 million investment. O'Rourke, with scienter, failed to disclose to any of the four Lighthouse investors that he intended to use their money to buy $2 million in Ameranth Stock and in so doing generate $200,000 in success fees for Western Pacific. Such information would have been material to a reasonable investor in deciding whether to invest in the Fund.

## F. O'ROURKE IMPROPERLY USED LIGHTHOUSE FUND ASSETS TO RESOLVE A DISPUTE WITH A WESTERN PACIFIC CLIENT

16. In 2006, a dispute arose between O'Rourke and a client ("Client B") regarding the client's $800,000 investment in the Offering, for which Western Pacific had received $80,000 in success fees. Client B had money invested with O'Rourke, had referred business to O'Rourke, and had promised that he would substantially increase the amount invested with O'Rourke.

17. Before the Offering closed, Client B told O'Rourke that he no longer wanted to invest in Ameranth and requested the return of his money. Ameranth, however, insisted that Client B had committed to the $800,000 investment. Ultimately, O'Rourke used Lighthouse to pay back Client B—increasing the Fund's Ameranth position by 40%: Specifically, in October 2006, O'Rourke caused Lighthouse to purchase $300,000 of Ameranth Stock from Client B; in March 2007, O'Rourke allowed Client B to contribute his remaining $500,000 of Ameranth Stock to the Fund in exchange for a partnership interest in the Fund; and in late 2008, after Client B had requested full redemption from the Fund, O'Rourke paid Client B $410,000 as a complete redemption of his investment in Lighthouse.

18. O'Rourke' $410,000 distribution to Client B improperly preceded the completion of an earlier redemption request from another Lighthouse investor and Western Pacific client ("Client C"). More than a year before Client B made his redemption request, Client C had requested a full redemption of his $522,425 investment in the Fund, which was valued at $575,342 as of September 30, 2007. O'Rourke and Client C agreed that he would receive his redemption in four quarterly payments and that he would be fully redeemed within a year. O'Rourke failed to make the redemption payments to Client C as promised and ultimately failed to provide Client C a full redemption, instead providing Client B with a full redemption. In late 2007 and early 2008, O'Rourke made two payments to Client C totaling $300,000, leaving approximately $222,425 remaining to be redeemed. O'Rourke promised the next payment to Client C in September 2008. Instead of making the promised payment to the Client C, however, O'Rourke paid Client B the $410,000. While O'Rourke made an additional $100,000 payment to Client C in early 2009, approximately $122,425 remains outstanding.

## G. O'ROURKE REPEATEDLY MISREPRESENTED THE FUND'S LIQUIDITY TO LIGHTHOUSE INVESTORS

19. From 2005 to at least 2008, O'Rourke lied when Fund investors inquired about the Fund's liquidity. O'Rourke repeatedly misrepresented that the Fund was liquid, and at times stated that the Fund's illiquid investments (including Ameranth) comprised only about 25% of Fund assets. Specifically, O'Rourke sent the following emails from his Western Pacific email account:

- On June 6, 2005, O'Rourke emailed Client A regarding the Fund, stating that "your account will have exactly the same liquidity availability that you currently enjoy at Waterhouse." At the end of June, O'Rourke invested 99% of the Fund's assets in Ameranth.

- On October 12, 2005, in response to Client A's email notifying O'Rourke that there were "liquidity requirements" for a line of credit he had, O'Rourke told Client A, who had invested $1 million in the Fund, that "[a]s far as liquidity is concerned, we consider [Lighthouse] to be a very liquid investment, but the subscription agreement provides for some advance notification as the fund stays pretty much fully invested at all times . . . and we ask for some time

to liquidate some of the investments to provide for any requested redemptions."

- On February 19, 2007, O'Rourke emailed Client A that "[w]e do hold some 'illiquid' positions as you know. . . . The percent of illiquid investments is about 25%."

- On March 8, 2007, in response to Client A's request for further confirmation regarding the Fund's illiquid positions, O'Rourke stated that "[t]he percentage of illiquid investments is 'about 25%' . . .," that the Fund's size was about "$7 million," and that as a result $1.55 million was invested in Ameranth and $200,000 was invested in another illiquid investment. Less than a month later, however, O'Rourke emailed the Fund's administrator that as of the end of March 2007, the Fund held $2,665,000 worth of Ameranth stock. The Fund's total assets at that time were less than $3 million.

- In February 2008, O'Rourke and a client who had invested $150,000 in the Fund ("Client D"), exchanged emails regarding the Fund's liquidity. Among other things, Client D asked O'Rourke to confirm that the two illiquid investments in the Fund made up only "25% of the portfolio?" On February 2, 2008, O'Rourke responded to Client D without clarifying that the illiquid investments actually comprised almost all of Lighthouse's assets. Two days later, when inquiring as to whether "[i]f needed, can some portion of funds be withdrawn," Client D specifically asked O'Rourke whether there was "any liquidity to investments in the Lighthouse Fund." In response, O'Rourke stated that "[o]ther than the two companies that you know of . . . all of the other investments are liquid." Again, O'Rourke did not clarify that almost all of the Fund's assets were in the two illiquid investments, misleading Client D into believing that there was sufficient liquidity in the Fund to accommodate withdrawals.

## H. VIOLATIONS

20. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

21. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Sections 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients, and engaging in transactions, practices or courses of business that defrauded clients or prospective clients.

22. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which prohibits fraudulent conduct by advisers to "pooled investment vehicles" with respect to investors or prospective investors in those pools.

23. As a result of the conduct described above, Western Pacific and O'Rourke willfully violated Section 15(a)(1) of the Exchange Act, which prohibits any entity from making use of the mails or any means or instrumentality of interstate commerce to effect transactions in securities without registering as a broker-dealer or, if a natural person, without being associated with broker-dealer.

24. As a result of the conduct described above, Western Pacific and O'Rourke violated Section 206(3) of the Advisers Act, which prohibits any investment adviser, when acting as broker for a person other than its client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which it is acting and obtaining the consent of the client to such transaction.

## III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondent Western Pacific pursuant to Section 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondent O'Rourke pursuant to Section 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

E. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act and Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of

Section 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2), 206(3) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and Section 203(i) of the Advisers Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, Sections 21B(e) and 21C(e) of the Exchange Act, and Section 203 of the Advisers Act.

**IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary