UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64029 / March 3, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3169 / March 3, 2011

INVESTMENT COMPANY ACT OF 1940
Release No. 29594 / March 3, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-13934

In the Matter of **SAM P. DOUGLASS and** **ANTHONY R. MOORE,** **Respondents.**	**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO ANTHONY R. MOORE ("ORDER")**

I.

On June 10, 2010, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) 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 Anthony R. Moore ("Moore" or "Respondent").

II.

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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Anthony R. Moore ("Order"), as set forth below.

III.

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

Summary

Sam P. Douglass, who is also a respondent in these proceedings, served as chairman of Equus Total Return, Inc. ("Equus" or "the Fund"), a business development company ("BDC"), from September 1991 through June 2005. From May 1997 through June 2005, Douglass controlled the investment adviser that provided investment advice to the Fund. During a June 2005 proxy solicitation to approve a change in Fund investment advisers, an Equus press release included a statement by Douglass that officers and directors would not receive above-market prices for their stock options in contemplated private transactions relating to the proposed adviser change. Two weeks before the press release, however, Douglass participated in negotiations with attorneys for the new adviser concerning a senior vice president's compensation package, which provided for a 26% stock-option premium.

Moore, who controlled Equus's new investment adviser, knew about the senior vice president's stock-option premium before the new adviser took over on June 30, 2005. The same day, however, he sought reimbursement of $535,000 from the Fund for "unforeseen" expenses, most of which covered the stock-option premium. Moore did not inform Equus's board or its CFO that the reimbursement request related to the premium. Equus's subsequent Commission filings, signed by Moore, contained inaccurate statements relating to the premium payment. As a result of the foregoing, Moore violated or caused violations of antifraud and other provisions of the federal securities laws.

Respondent

1. Moore, age 63, resides in London, England and is the co-founder and CEO of Moore, Clayton & Co., Inc., an international private equity investment and advisory firm. He served as Equus's co-chairman and president from June 2005 to December 2007, and as its CEO from June 2005 to August 2007.

Other Relevant Person and Entities

2. Douglass, age 78, resides in Houston, Texas and was chairman and CEO of Equus, a business development company, from September 1991 to December 2007. Douglass is an attorney licensed in Texas.

3. Equus, a Delaware corporation based in Houston, Texas, became a BDC on September 6, 1991. Equus trades as a closed-end fund on the New York Stock Exchange, under the symbol "EQS." Its securities are registered under Section 12(b) of the Exchange Act.

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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.

4. Moore, Clayton & Co., Inc. ("MCC"), is an international private equity investment and advisory firm headquartered in London with operations in many countries including the United States. Moore is one of MCC's principal shareholders.

5. Moore Clayton Capital Advisors, Inc. ("MCCA"), a Delaware corporation based in Houston, Texas, is wholly owned by MCC. MCCA was a Commission-registered investment adviser from July 5, 2005 to July 6, 2009, when its contract with Equus was not renewed. MCCA became Equus's investment adviser, via proxy vote, on June 30, 2005.

6. Equus Capital Administration Company ("ECAC"), a Utah corporation based in Houston, Texas and controlled by Moore, acted as Equus's administrator from June 30, 2005 to July 1, 2009.

7. Equus Capital Management Corporation ("ECMC"), a Delaware corporation based in Houston, Texas and controlled by Douglass, was a Commission-registered investment adviser from June 8, 1984 to September 29, 2005. ECMC was Equus's investment adviser and administrator from May 9, 1997 to June 30, 2005.

Facts

Proposed Change in Equus's Investment Adviser

8. In late 2004, several large Equus shareholders pressed Equus management to consider liquidating the Fund. Consequently, on January 21, 2005, Equus's board created a special committee of three independent directors to review alternatives, including hiring a new adviser.

9. About the same time, Douglass learned that Moore wanted to purchase a U.S.-based investment management company. He proposed that Moore purchase Douglass's interest in ECMC and take over as Equus's adviser. Accordingly, in January 2005, Moore and his firm, MCC, agreed to purchase Douglass's ECMC shares. Douglass then asked the special committee to consider hiring MCCA as Equus's new investment adviser.

10. On March 31, 2005, the special committee recommended that the board engage MCCA as Equus's adviser. The special committee further recommended that ECAC (MCCA's sister company) become the Fund administrator.

11. On May 5, 2005, MCC agreed to purchase Douglass's interests in ECMC for more than $4 million. The purchase agreement was contingent on Equus shareholder and Board approval of MCCA's appointment as adviser and ECAC's appointment as administrator. As part of the agreement, MCCA agreed to purchase 27.5% of the Fund's outstanding shares.

12. Because several large Equus shareholders still favored liquidating the Fund rather than merely changing advisers, MCC agreed, as part of its purchase of Equus shares, to acquire these shareholders' stock at a negotiated price of $9.49 per share (about $1 per share above the market price).

MCCA's Proposed Advisory Agreement

13. MCCA's proposed advisory agreement with Equus provided that MCCA would receive an annual asset based fee of 2% and a performance fee equal to 20% of the Fund's realized capital gain, net of all realized capital loss and unrealized capital depreciation. This differed from Equus's agreement with ECMC, under which ECMC and its officers received stock options to incentivize their performance. Section 205 of the Advisers Act generally prohibits investment advisers from receiving performance fees. Section 205(b)(3) provides an exception for advisory contracts with BDCs if, among other things, the BDC doesn't have "outstanding any option, warrant, or right issued" pursuant to Section 61(a)(3)(B) of the Investment Company Act, which permits BDCs to issue certain options. Therefore, to enter an advisory agreement with Equus that included a performance fee, MCCA had to purchase or cancel the outstanding options issued to ECMC and Equus employees who continued to work for the Fund after the change in advisers.

The Proxy Statement

14. On April 6, 2005, Equus's board approved the special committee's recommendations and authorized the filing of proxy materials recommending that shareholders approve MCCA's advisory agreement and ECAC's administration agreement. Equus filed its preliminary proxy statement on May 10, 2005, and filed its definitive proxy statement on May 27, 2005. Both proxy filings proposed to discontinue the stock option plan and to require MCCA to purchase all outstanding stock options from the Fund's officers and directors. The proposed administration agreement stated that, while MCCA was responsible for all investment professionals' expenses including salaries, ECAC may provide "significant managerial assistance to the Fund's portfolio companies." Payments to ECAC were capped at $450,000 per year.

Retention of Certain Employees

15. After the special committee recommended MCCA as the new adviser, Moore told Douglass that MCCA needed to retain certain ECMC employees, especially its senior vice president ("the senior vice president"), an Equus senior vice president who located and evaluated the companies in which Equus invested. Thereafter, Douglass participated in negotiations with the senior vice president concerning his new compensation package.

16. On June 10, 2005, Douglass, through his assistant, sent the senior vice president an e-mail that included a summary of negotiations with MCC and its attorneys concerning the senior vice president's compensation package. That summary called for payment for the senior vice president's stock options at a price of $10.49 per share, a 26% premium over the current market price of $8.30. The premium would be paid out in a retention bonus of $60,000, with the remainder structured as a consulting agreement with ECAC that would compensate the senior vice president an additional $373,620.

Douglass's Materially Misleading Statements in a June 22, 2005 Press Release

17. On June 17, 2005, in the midst of the proxy solicitation, Dow Jones Newswire ran a story about Equus, highlighting the Fund's performance issues and discussing ongoing

disagreements between the Fund's management and certain large shareholders about the Fund's fate. The story specifically quoted one shareholder who said that the Fund "should be shut down." The Dow Jones story also noted the proxy statement's commitment that MCCA would purchase 27.5% of Equus's outstanding shares on the public market or through "privately-arranged transactions with individual shareholders." According to the story, this raised concerns among some shareholders that not all shareholders would be given the chance to sell at a favorable price.

18. In response to the Dow Jones Newswire story, Equus issued a press release on June 22, 2005, regarding the proposed change in advisers. Douglass approved the issuance of the press release, which addressed, among other things, the change in the adviser's incentive-compensation structure and MCCA's commitment to purchase shares. The press release attributed the following statement to Douglass:

> "In order to adopt the new incentive compensation structure, the Fund may not have any outstanding stock options in accordance with legal requirements. To facilitate the exercise of the existing stock options held by officers and directors, Moore Clayton may buy the shares issued upon exercise of such options. *The purchase price paid for any such shares will not exceed the current market price for the shares*." [Emphasis added.]

19. The market price for Equus shares at the time was approximately $8.30 per share. Given the agreement negotiated earlier, pursuant to which the senior vice president was to be paid a significant premium above market price for his options, the June 22, 2005 press release was materially misleading. Equus filed the press release with the Commission on June 22, 2005, under cover of Form 8-K and also filed it on June 24, 2005, as definitive additional proxy materials on Schedule 14A.

Approval of MCCA and ECAC's appointment

20. Equus's shareholders approved MCCA as the new adviser and ECAC as the new administrator on June 30, 2005. Equus's board, at a meeting later that day, approved the contracts to appoint MCCA as Equus's new adviser and ECAC as the Fund's new administrator. In addition, that day the senior vice president and Moore signed the senior vice president's consulting agreement with MCCA and his consulting agreement with ECAC.

Special Administrative Fee

21. During the June 30, 2005 board meeting, Moore disclosed that ECAC had encountered $800,000 in "unforeseen administrative expenses" relating to the adviser change and asked Equus to cover those expenses. Although not disclosed at the board meeting, a significant portion of the "unforeseen administrative expenses" was the senior vice president's compensation.

22. In response, Equus's board formed a special committee, consisting of three independent board directors, to examine the unforeseen administrative expenses and to determine whether the Fund should reimburse ECAC. During the special committee's review, an independent director discussed with Moore the components of the special administrative fee.

Moore admitted that some of the expenses included retention bonuses for the senior vice president and others, but did not enumerate the specific amounts.

23. On August 9, 2005, upon the special committee's recommendation, Equus's board agreed to pay MCCA a one-time supplemental fee of $535,000 (approximately 1% of the Fund's assets at the time) to reimburse "extraordinary costs that were incurred by the Management Company above what had been anticipated" with respect to the change in administrators. In effect, the Fund paid for the stock option premium paid to the senior vice president without any disclosure to the shareholders or the public.

24. Equus's CFO thereafter prepared (or assigned someone to prepare) a spreadsheet outlining the components of the fee: $400,000 for the senior vice president's consulting agreement with ECAC; $60,000 for the senior vice president's retention bonus; and $75,000 of retention bonuses for other personnel.

Equus's Subsequent Commission Filings

25. Equus filed its second quarter 2005 Form 10-Q on August 15, 2005. Moore certified this filing, which disclosed that the Fund had reimbursed ECAC $535,000 for unexpected costs and expenses associated with the change in administrators. The Form 10-Q, however, failed to disclose the true purposes of the special administrative fee or that the majority of the funds compensated the senior vice president.

26. On March 31, 2006, Equus filed its 2005 Form 10-K, which Moore certified. This filing also disclosed that the special administrative fee was associated with the change in administrators, but failed to disclose that the special administrative fee primarily compensated a Fund officer.

27. On April 24, 2006, Equus filed its annual proxy statement providing information about officer and director compensation in 2005. The proxy statement represented that the senior vice president received compensation of $136,620 in 2005, consisting of realized earnings from the company's acquisition of his 198,000 stock options. This figure was materially understated because the senior vice president, in fact, received more than $460,000 from the transaction. This misleading compensation disclosure was incorporated by reference in Equus's 2005 Form 10-K.

28. Moore failed to inform Equus's CFO and Equus's auditor of the premium paid to the senior vice president for his stock options. He signed management-representation letters to the auditor for the third quarter of 2005 and for fiscal year 2005 that confirmed that Equus's financial information was fairly presented and that all material transactions were properly recorded. These representations were materially misleading in light of the senior vice president's undisclosed stock-option premium.

Legal Discussion

Standards to Establish Violations

29. Section 13(a) of the Exchange Act requires issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'l, Inc*., 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975). No showing of *scienter* is necessary to establish an issuer's violation of Section 13(a). *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978). In the securities context, *scienter* refers to a mental state embracing intent to deceive, manipulate, or defraud. *Aaron v. SEC*, 446 U.S. 680, 686 n. 5 (1980).

30. Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal-accounting controls sufficient to provide reasonable assurances that transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles. No showing of *scienter* is necessary to establish violations of Sections 13(b)(2)(A) and 13(b)(2)(B). *SEC v. World-Wide Coin Investments*, 567 F. Supp. 724, 749-51 (N.D. Ga. 1983).

31. Exchange Act Rule 13b2-1 prohibits a person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act. Exchange Act Rule 13b2-2(a) provides that no director or officer of an issuer shall, directly or indirectly, make or cause to be made a materially false or misleading statement to an accountant or omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with financial-statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission. No showing of *scienter* is required to establish a violation of Rules 13b2-1 or 13b2-2. *World-Wide Coin*, 567 F. Supp. at 749; Promotion of the Reliability of Financial Information and Prevention of the Concealment of Questionable or Illegal Corporate Payments and Practices, Exch. Act Rel. No. 15570, 16 SEC Docket 1143 (Feb. 15, 1979).

32. Exchange Act Rule 13a-14, among other things, requires a principal executive officer to certify in each quarterly and annual report filed or submitted under Section 13(a) of the Exchange Act that the officer has reviewed the report and that, based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report.

33. Exchange Act Rule 14a-9 provides that no proxy solicitation shall be made which is materially false or misleading. A violation of this rule results in a violation of Section 14(a) of the Exchange Act. No showing of *scienter* is required. *See Wilson v. Great American Industries, Inc.*, 855 F.2d 987, 995 (2d Cir. 1988).

34. Section 206(2) of the Advisers Act prohibits an investment adviser from 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). *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963).

Standards for Cease-and-Desist Order, Remedial Sanctions, and Penalty

35. Under Section 21C(a) of the Exchange Act and Section 203(k) of the Advisers Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of those acts and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation. In this context, "cause" is based upon negligence, which is "sufficient to establish liability for causing a primary violation that does not require *scienter*." *Matter of Warwick Cap. Mgmt., Inc., et al.*, Admin. Proc. File No. 3-12357, 2007 WL 505772, at *10 (Feb. 15, 2007) (quoting *KPMG Marwick LLP*, 54 S.E.C. 1135, 1175 (2001).

36. Under Section 203(f) of the Advisers Act, the Commission may censure, impose activities limits, suspend, or bar from association any person associated with an investment adviser who, among other things, has willfully violated any provision of the Exchange Act or Advisers Act.[2]

37. In any proceeding instituted pursuant to Section 9(b) of the Investment Company Act against any person, the Commission may impose a civil penalty if it finds that such person has willfully violated any provision of the Exchange Act.

Violations

As a result of the conduct described above, Moore willfully violated Section 14(a) of the Exchange Act and Rules 13b2-1, 13b2-2, 13a-14, and 14a-9 thereunder and caused violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder and Section 206(2) of the Advisers Act.

IV.

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

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[2] A willful violation means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Accordingly, pursuant Section 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that**:**

A. Respondent Moore shall cease and desist from committing or causing any violations and any future violations of Section 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, 13a-14, 13b2-1, 13b2-2, and 14a-9 thereunder and Section 206(2) of the Advisers Act.

B. Respondent Moore is censured.

C. Respondent Moore shall pay a civil money penalty in the amount of $25,000 to the United States Treasury. Payment shall be made in the following installments: (1) $10,000 within 10 days of the entry of this Order; (2) $5,000 within 120 days of the entry of this Order; $5,000 within 240 days of the entry of this Order; and (3) $5,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Respondent Moore as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephen J. Korotash, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit 18, Fort Worth, Texas 76102.

By the Commission.

Elizabeth M. Murphy
Secretary

<u>Service List</u>

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Anthony R. Moore ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties entitled to notice:

Honorable Brenda P. Murray
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