

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2867 / April 17, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13446

In the Matter of

**AMERICAN SKANDIA INVESTMENT
SERVICES, INC.,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT
OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER**

I.

The United States Securities and Exchange Commission (the “Commission”) deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against American Skandia Investment Services, Inc. (“ASISI” or “Respondent”)¹.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that 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 in which the Commission is a party, and without admitting or denying the findings, except those findings pertaining to the jurisdiction of the Commission over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the

¹ Respondent ASISI is now known as AST Investment Services, Inc.

Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”) as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

SUMMARY

1. These proceedings concern market-timing related misconduct by ASISI as investment adviser to the American Skandia Trust (“AST”) portfolios that serve as a funding vehicle for variable annuities issued by American Skandia Life Assurance Corporation (“ASLAC”). From at least January 2000 through in or around September 2003, ASISI accommodated widespread market timing in the AST portfolios (hereafter referred to as “sub-accounts”).

2. Throughout this period, ASISI negligently failed to consider and to investigate adequately credible complaints from the investment advisers that had been hired to sub-advise certain of AST’s sub-accounts (hereafter referred to as “sub-advisers”) to the effect that market timing was having a detrimental effect on the performance of the sub-accounts and negligently failed to inform the AST Board of Trustees of these complaints.

3. The AST Board of Trustees was not aware of the complaints from sub-advisers or of ASISI’s negligent failure to consider and to investigate adequately the sub-advisers’ complaints at the same time that it was accommodating widespread market-timing assets. Consequently, the AST Board of Trustees lacked adequate information to give informed consideration to whether the sub-accounts had adequate policies and procedures in place with respect to market timing and further lacked information as to whether performance in certain AST sub-accounts was adversely affected by market timing. In addition, ASISI did not inform the AST Board of Trustees that ASISI internally classified certain AST sub-accounts as either “available for” or “restricted” from market timing and steered those engaged in active trading, including market timers, into the “available” accounts. As a result, and as described more fully below, ASISI violated Section 206(2) of the Advisers Act.

RESPONDENT

4. ASISI is based in Shelton, Connecticut, and was incorporated in Connecticut on October 11, 1991. ASISI, at all relevant times, was the investment adviser to AST. At all relevant times, ASISI was registered with the Commission as an investment adviser under Section 203 of the Advisers Act. ASISI was formerly an indirect wholly owned subsidiary of Skandia Insurance Company Ltd. (publ). On May 1, 2003, ASISI became an indirect subsidiary of Prudential Financial, Inc. (“PFI”).

² The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

FACTS

5. From at least January 2000 through in or around September 2003, ASLAC offered and its affiliates distributed variable annuities and other investment products to investors in the United States. Variable annuities are securities in the form of insurance contracts that provide for tax-deferred accumulation during the accumulation period and various payout options, including a series of payments to be made to a person named as the “annuitant” in the contract. The payments typically begin upon the annuitant’s retirement. Hedge funds and others that engaged in market timing through variable annuities, however, did not purchase the products to obtain retirement income. Rather, they often purchased variable annuities to be able to market time the underlying mutual-fund portfolios.

6. Investors in variable annuities could invest, depending on the year, in 50-91 sub-accounts, of which, depending on the year, 33-41 were sub-accounts of AST. ASISI acted as the investment adviser to the AST sub-accounts. ASISI contracted with other investment advisers, the sub-accounts’ sub-advisers, to make the day-to-day investment decisions for the sub-accounts. The value of the variable annuities depended on the performance of the investment options chosen by the contract holder.

7. Variable annuities were a substantial part of ASISI’s business, and as of December 31, 2003, ASISI acted as adviser for more than \$25.8 billion in investor assets invested in ASLAC annuity accounts. ASLAC offered its variable annuities to the investing public through registration statements filed with the Commission. The variable annuities were distributed by an affiliated broker-dealer through a network of independent broker-dealers and banks.

8. “Market timing” refers to (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual-fund shares in order to exploit inefficiencies in mutual-fund pricing. Market timing, while not illegal *per se*, can harm other mutual-fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, and can disrupt the management of the mutual fund’s investment sub-account. Market timing can also cause the targeted mutual fund to incur additional costs, which are borne by all the shareholders, to accommodate the market timer’s frequent buying and selling of shares.

ASISI ACCOMMODATED CERTAIN MARKET TIMING

9. From at least January 2000 through in or around September 2003, ASISI accommodated certain market timing in certain AST sub-accounts, which diluted certain sub-accounts by at least \$ 34 million and earned ASISI management fees on market-timing assets.

10. During the same period, ASISI wholesalers accommodated business from known market timers. Among other things, these wholesalers alerted customers to the availability of market-timing capacity.

11. In response to internal concerns and sub-advisers’ complaints concerning the detrimental effects of large cash flows into and out of certain of their sub-accounts, in early

2000, ASISI created certain guidelines regarding excessive trading. Pursuant to these guidelines, annuity funds were classified as “restricted” or “available.” ASISI assigned two employees (the “market-timing police”) to provide sub-advisers with advance warning of large cash flows in or out of ASISI-advised sub-accounts. As the market-timing police became more aware that market timing caused large cash flows in and out of certain of the sub-accounts, they created and enforced an anti-market-timing policy based on their understanding of the ASLAC prospectuses, their experience with portfolio managers, and some internet research. The policy attempted to restrict market timing in sub-accounts deemed sensitive, and to allow market timing in the remaining sub-accounts considered less sensitive to market-timing harm. Contract holders who were actively market timing certain of the AST sub-accounts, and who contacted ASISI wholesalers, were able, for example, to negotiate with the market-timing police to receive a certain amount of market-timing “capacity” in certain sub-accounts. The market-timing police would set limits on the dollar amount and/or frequency of trading that these market timers could conduct, and after 4:00 p.m. each day would manually review daily trade reports to either “bust or adjust” (*i.e.*, either cancel or reduce the size of) trades that they were able to catch that exceeded agreed-to limits.

12. In some instances, wholesalers worked directly with the market-timing police regarding the availability of capacity in certain sub-accounts. For example, in early 2003, an ASISI wholesaler summarized a market-timing arrangement he and one of the market-timing police for the AST funds had created for an \$8.8 million annuity investment by a market timer:

Using the following structure . . . we believe we can handle [the investor’s] moves without causing problems with the portfolio manager I hope that this arrangement represents an alternative that is more attractive than moving the money [out of AST sub-accounts].

**ASISI FAILED TO INVESTIGATE ADEQUATELY
MARKET-TIMING CONCERNS RAISED BY ITS SUB-ADVISERS AND
FAILED TO INFORM THE AST BOARD OF TRUSTEES ADEQUATELY OF
INFORMATION CONCERNING MARKET TIMING.**

13. Throughout the period that ASISI accommodated market timers, ASISI received oral and written complaints from sub-advisers concerning the detrimental effect that market timing was having on the performance of certain of the AST sub-accounts. ASISI negligently failed to investigate these complaints adequately and did not properly determine the impact that market timing had on certain of the sub-accounts.

14. The complaints were numerous and detailed. For example, in December 2000, one sub-adviser informed ASISI that:

The extreme level of volatility [in an AST sub-account] is impacting the management of the fund in several ways: 1) because the vast majority of flows have been “hot money” – these flows remain uninvested and dilute portfolio performance, 2) this forces us to exceed the 20% cash limit on a regular basis, 3) the frequency of flows is distracting to the portfolio team and monitoring the flows is cumbersome to both the investment and client service teams, and 4) as

long-term investors start to come into the fund, this level of “hot money” seriously hurts their performance opportunity.

15. As further examples, in June 2002, one sub-adviser stated that the sub-adviser’s international sub-account “could easily be losing half of [its] anticipated active return due to the market timer flows.” And in September 2002, the same sub-adviser informed ASISI that the sub-adviser’s small capitalization growth sub-account, with only \$10 million under management, was regularly experiencing \$2 million cash inflows and outflows from market-timing activity. As a result, the sub-adviser was forced to hold nearly half of the sub-account’s assets in futures contracts to accommodate market-timer-related cash flows. Another sub-adviser, in a letter addressed directly to the ASISI manager responsible for evaluating sub-adviser performance, stated that “the impact [of market timing] has been 100-200 bp [basis points] per year.”

16. During this same period, these and other complaints from sub-advisers and internal concerns prompted an internal discussion within ASISI of market timing in the sub-accounts. As early as November 2000, at least some ASISI managers were arguing that ASISI’s failure to deal with market timing was hurting its funds’ performance. One manager argued, “If we could actually implement the necessary system to allow monitoring [of timing trades on a before-the-fact basis], adding a basis point or two to net performance [of the ASISI funds] is probably a layup.”

17. But the committee did little to address the complaints or concerns. In March 2001, an ASISI executive advised other managers that:

“[w]e are close to losing some [sub-advisers] in some of our funds if we do not get our collective arms around this issue. . . . We need to decide as an organization if and how we can support the needs of both our clients, including market timers/allocators and our buy and hold investors.

18. Despite this warning, another ASISI manager responded that he saw little progress:

[B]efore we can do anything, we need to be sure we have a clear understanding of the problem We need to start by understanding who owns this and who is taking charge of defining the problem and leading the project to identify solutions.

19. As late as September 2001, internal emails make it clear that ASISI was still debating whether accommodating market timers was beneficial to ASISI’s (not the sub-accounts’) bottom line. One executive updated other managers on his conversations with the market-timing police, saying that:

It once again seems that [the market-timing police] are in the middle of warring factions. On one side [are two executives] wanting to completely remove timers from our funds and on the other side [are two other executives] who feel that timing needs to be analyzed and possibly embraced.

In the same email, the executive asked, “Has anyone actually analyzed timers and their trades to see if they end up hurting American Skandia financially?”

20. ASISI’s market-timing review continued without resolution until the December 2002 announcement that PFI would purchase ASISI, Inc. (“ASI”), the parent company of ASISI and its affiliates. But even though PFI did not complete the purchase until May 2003, the announcement effectively halted further action by ASISI because some ASISI personnel apparently concluded that market timing would become “[PFI’s] problem now.”³

21. Beginning in July 2000, ASISI reviewed the performance of each sub-account on a quarterly basis. In conducting those reviews, the sub-account performance-review manager considered but failed to give weight to claims by certain sub-advisers that market timing was harming the performance of their sub-accounts. Based on his review, the manager decided instead that the investment performance of the sub-advisers had lagged. The manager stated, however, that his review “never got to market timing as a factor” and that he “did not know” whether there was any way to determine whether market timing had a detrimental effect on the performance of a sub-account. ASISI eventually terminated two of the sub-advisers for their investment performance, but between 2000 and 2002, one of the terminated sub-accounts experienced significant market-timing dilution.

22. ASISI failed to adequately consider, investigate or analyze the impact of market timing on the management and performance of the AST sub-accounts, despite indications of its potential detrimental effect on performance. Thus, ASISI negligently failed to inform the Board of Trustees or its client, AST, of the possibility that market timing was having a significant adverse impact on sub-account performance. As a result, the AST Board did not have the information necessary to consider whether sufficient restrictions on market timing were in place in the AST sub-accounts. ASISI knew or should have known that the AST Board needed periodic information relevant to the AST sub-accounts’ ability to achieve their investment objectives and performance goals, including information reasonably necessary for the Board to make policy and operational determinations on matters such as limits on market timing.

³ On May 1, 2003, PFI completed the purchase of ASI. In 2003 and the first half of 2004, PFI adopted controls, procedures, and measures to identify short-term trading in the AST sub-accounts and to protect investors in those sub-accounts. These measures included: fair market valuation of international securities in the AST sub-accounts; refined controls relating to the approval of investment transfers in which the investor had a pattern of frequent trading in an annuity contract; technological investment in ASISI’s operational surveillance capabilities, which resulted in system locks to limit the number of transfers in and out of particular sub-accounts; and enhanced supervision and training of operational personnel responsible for monitoring short-term trading in the AST sub-accounts.

VIOLATIONS

23. As a result of the conduct described above, ASISI willfully⁴ violated Section 206(2) of the Advisers Act. Section 206(2) prohibits an investment adviser from engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon clients or prospective clients. A violation of Section 206(2) may be established by a showing of negligence. SEC v. Steadman, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992). Despite internal discussions about the potential adverse impact of market timing on sub-account performance, and the adequacy of its own policies and procedures with respect to market timing, ASISI negligently failed to consider, investigate or analyze sub-adviser complaints that market timing was having adverse effects on the AST sub-accounts. In doing so, ASISI negligently failed to inform the AST Board of Trustees of material information concerning market timing and its potential effects. As a result, the AST Board of Trustees had insufficient information regarding the potential causes of the sub-advisers' investment results in certain of the AST sub-accounts, and ASISI's implementation of its own market-timing policies and procedures. In addition, the AST Board lacked adequate information to consider whether the sub-accounts had adequate policies and procedures in place with respect to market timing.

REMEDIAL EFFORTS

24. In determining to accept the Offer, the Commission considered remedial acts undertaken by the Respondent and cooperation afforded the Commission staff.

UNDERTAKINGS

25. Ongoing Cooperation. In determining to accept the Offer, the Commission has considered the following undertakings by ASISI:

ASISI shall cooperate fully with the Commission in any and all investigations, litigation, or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, ASISI has undertaken:

- a. to produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff;
- b. to use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

⁴ A willful violation of the securities laws means merely "that the person charged with the violation 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)).

- c. to use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. that in connection with any testimony of ASISI to be conducted by the staff of the Commission at deposition, hearing or trial pursuant to a notice or subpoena, ASISI:
 - i. agrees that any such notice or subpoena for ASISI's appearance and testimony may be served by regular mail on its attorney, Stephen J. Shine, Chief Regulatory Counsel, The Prudential Insurance Company of America, 751 Broad Street, Newark, New Jersey 07102; and
 - ii. agrees that any such notice or subpoena for ASISI's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

26. Periodic Compliance Review. ASISI completed a compliance review in 2006 and has undertaken that by no later than 2009, ASISI shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning ASISI's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the code of ethics and federal securities law violations by ASISI and its employees in connection with their duties and activities on behalf of and related to the AST funds. The report shall be promptly delivered to ASISI's Board of Directors, to the Audit Committee of the AST Board of Trustees and to the staff of the Commission. If ASISI has a third party conduct ASISI's annual review under Rule 206(4)-7 of the Advisers Act [17 C.F.R. § 275.206(4)-7], that party may also conduct the compliance review required by this paragraph.

27. Independent Distribution Consultant. ASISI shall retain, within 90 days of the date of entry of this Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission and the independent members of the AST Board of Trustees. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by ASISI (except for a payment permitted by paragraph XI of the Offer).⁵ ASISI

⁵ Paragraph XI of the Offer states that:

Respondent agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source including, but not limited to, payments made pursuant to any insurance policy, with regard to any penalty amount that Respondent shall pay pursuant to this Order, regardless of whether such penalty amount or any part thereof is added to a distribution fund or otherwise used for the benefit of investors. Respondent further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state or local tax for any penalty amount that Respondent shall pay pursuant to this Order, regardless of whether such penalty amount or any part thereof is added to a distribution fund or otherwise used for the benefit of investors. The provisions of this paragraph do not apply to or prevent any

shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review. ASISI shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalties ordered in Section IV of this Order, and any interest or earnings thereon, according to a methodology developed in consultation with ASISI and acceptable to the staff of the Commission and the independent Trustees of the AST funds.

- a. ASISI shall require that the Independent Distribution Consultant submit a Distribution Plan to ASISI and the staff of the Commission no more than 250 days after the date of entry of this Order.
- b. The Distribution Plan developed by the Independent Distribution Consultant shall be binding upon ASISI and the staff of the Commission unless, within 280 days after the date of entry of this Order, ASISI or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.
- c. With respect to any determination or calculation with which ASISI or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 310 days of the date of entry of this Order. In the event that ASISI and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding, but must be approved by the Commission pursuant to sub-section 27(d) below.
- d. Within 325 days of the date of entry of this Order, ASISI shall require that the Independent Distribution Consultant submit to the Division of Enforcement the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules regarding Fair Fund and Disgorgement Plans. Following a Commission order approving a final plan of disgorgement, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules regarding Fair Fund and Disgorgement Plans, ASISI shall require that the Independent Distribution Consultant, with ASISI, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds. ASISI shall pay all reasonable costs of the distribution.

payment directly or indirectly from Skandia Insurance Company Ltd. (publ) or an affiliate to Prudential Financial, Inc. or an affiliate as provided in the December 19, 2002 Stock Purchase Agreement among Prudential Financial, Inc., Skandia Insurance Company Ltd. (publ), and others and in the August 3, 2005 letter agreement among Prudential Financial, Inc., Prudential Annuities Holding Company, Inc., and Skandia Insurance Company Ltd. (publ).

- e. ASISI shall require that, without prior written consent of a majority of the independent Trustees and the staff of the Commission, the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with ASISI, or any of its present or former affiliates, successors, directors, officers, employees, or agents acting in their capacity as such. ASISI shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under this Order not, without prior written consent of a majority of the independent Trustees and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with ASISI, or any of its present or former affiliates, successors, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- f. The compensation and expenses of any tax administrator appointed by the Commission to provide tax administration services relating to ASISI's payment of disgorgement and civil penalties shall be borne exclusively by ASISI (except for a payment permitted by paragraph XI of the Offer).

28. Certification. No later than twenty-four months after the date of entry of this Order, ASISI's chief executive officer shall certify to the Commission in writing that ASISI has fully adopted and complied in all material respects with the undertakings set forth in paragraphs 26 through 27 as applicable to the date of the certification or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

29. Recordkeeping. ASISI shall preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of ASISI's compliance with the undertakings set forth in paragraphs 26 through 27.

30. Continuing Application of Undertakings. ASISI's undertakings herein shall continue to apply respectively to ASISI or its successors for as long as ASISI continues to provide investment advisory services or until an undertaking terminates according to its terms; provided, however, that any successor to ASISI may petition the Commission and obtain relief from such undertakings if the successor can demonstrate that it has sufficient controls and procedures reasonably designed and implemented to detect and prevent the occurrence of the conduct summarized herein.

31. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offer. Accordingly, it is hereby ORDERED, that:

A. pursuant to Section 203(k) of the Advisers Act, ASISI shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act;

B. pursuant to Section 203(e) of the Advisers Act, ASISI is hereby censured; and

C. ASISI shall comply with the undertakings set forth in paragraphs 25 through 30 above.

D. Disgorgement and Civil Money Penalties.

1. ASISI, within 10 days of the entry of this Order, shall pay disgorgement in the total amount of \$34 million (“Disgorgement”) and a civil money penalty in the total amount of \$34 million (“Penalty”), for a total payment of \$68 million, to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier’s check, wire transfer, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) wire transferred, 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 ASISI as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order, wire transfer, or check shall be sent to Robert J. Burson, Senior Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois 60604.

2. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in Section IV.D.1. above. Regardless of whether any such Fair Fund distribution is made, 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, ASISI agrees that it shall not, after offset or reduction in any Related Investor Action based on ASISI’s payment of disgorgement in this action, further benefit by offset or reduction of any part of ASISI’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, ASISI agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. 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 ASISI 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.

E. Other Obligations and Requirements. Nothing in this Order shall relieve ASISI of any other applicable legal obligation or requirement, including any rule adopted by the Commission subsequent to this Order.

By the Commission.

Elizabeth M. Murphy
Secretary