

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 35522 / April 7, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22470

In the Matter of

**ADVANCE CAPITAL
MANAGEMENT, INC.**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Advance Capital Management, Inc. (“Advance Capital Management” or “Respondent”).

II.

In anticipation of the institution of these proceedings, 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Advance Capital Management, a registered investment adviser, caused its former client, Advance Capital I, Inc. ("ACI"), to violate Section 34(b) of the Investment Company Act by including materially false and misleading information in a Form N-8F filed with the Commission. In 2016, during the process of liquidating and closing ACI, a registered investment company, Advance Capital Management provided materially false and misleading answers on ACI's Form N-8F application to deregister as an investment company. The form asked for information regarding ACI's assets and whether ACI was a party to any litigation. Advance Capital Management failed to provide information in its possession for inclusion in the response to those questions that would have identified ACI as a member of certain shareholder classes on whose behalf class actions had been brought. The Commission subsequently granted ACI's application to deregister on the basis of incorrect information. In connection with ACI's liquidation, Advance Capital Management redeemed the shareholders' interest in ACI's four fund series (the "Funds") without disclosing the existence of ACI's then-pending class action claims. As the class actions resolved following the liquidation of the Funds, Advance Capital Management retained the proceeds from ACI's claims, primarily to recover expenses it incurred and fees it had forgone during the winddown of ACI.

Respondent

2. Advance Capital Management is a Michigan corporation with its principal place of business in Southfield, Michigan. Advance Capital Management has been registered with the Commission as an investment adviser since October 1986. In its most recent Form ADV, filed March 12, 2025, Advance Capital Management reported that it had approximately \$4.5 billion in regulatory assets under management.

Related Entity

3. ACI was organized on March 6, 1987, as a Maryland Corporation. ACI was registered under the Investment Company Act as an open-end management investment company. ACI offered two classes of shares in four fund series. ACI's Board of Directors ("ACI's Board") voted to liquidate and close ACI on July 29, 2016. On March 31, 2017, ACI filed a Form N-8F with the Commission, documenting its intent to apply for deregistration.

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.

Facts

4. Advance Capital Management served as ACI's investment adviser beginning in August 1987. ACI invested in fixed income securities and shares of companies. When some of those companies became the subject of shareholder class action litigation, ACI and its investors stood to benefit if the class actions were resolved through settlements or judgments that would result in distributions by the companies to the respective class members. Advance Capital Management handled ACI's class action claims until June 17, 2013, when it contracted with a third party ("Claims Agent") to identify class actions that could benefit one or more of the Funds, file any necessary paperwork, and remit any settlement proceeds, less the Claims Agent's fee, to Advance Capital Management for the benefit of the relevant Fund(s). Between 2013 and 2016, ACI's total annual receipts from class action claims were sporadic and varied from a high of \$64,621 in 2014 to a low of \$4,676 in 2015.

5. At a July 29, 2016, meeting, ACI's Board voted to close ACI and liquidate the Funds. Both Advance Capital Management and ACI's Board were represented by separate legal counsel in connection with the liquidation. The plan of liquidation that ACI's Board approved on July 29, 2016, included a limit on the expenses Advance Capital Management could charge to ACI "to protect shareholders from unfairly bearing the burden of potentially increased fees as the size of the Funds decreases." According to the agreement, which was executed on August 2, 2016, Advance Capital Management could be reimbursed for any waived expenses "if the Fund is able to make the repayment without exceeding its current expense limitations ... and the repayment is approved by the Board of Directors."

6. As part of the liquidation process, Advance Capital Management failed to consider whether pending class action claims could be monetized for the benefit of ACI's shareholders prior to redemption, or otherwise be used to benefit investors, even after it received an unsolicited offer to liquidate the Funds' outstanding class action claims in August 2016.

7. Pursuant to the Board-approved plan, Advance Capital Management began liquidating the Funds' holdings and closing ACI. Advance Capital Management redeemed non-affiliated investors first, leaving Advance Capital Management personnel and its employee stock option plan as the last investors in the Funds. The liquidation and redemption process was completed in December 2016. Advance Capital Management tracked its expenses through this process, eventually calculating that it cost the firm \$518,433 in costs and forgone fees. Advance Capital Management did not liquidate ACI's class action claims, and the Funds' investors were not compensated for the claims that remained outstanding at the time of redemption.

8. After liquidating the Funds, Advance Capital Management continued to receive sporadic distributions of proceeds from ACI's class action claims. Advance Capital Management did not distribute these proceeds to ACI's former shareholders.

9. On March 31, 2017, after an unanticipated increase in the amount of class action proceeds, ACI, with assistance from Advance Capital Management and its staff, filed with the Commission ACI's application for deregistration on Form N-8F. The filing, based on information

from Advance Capital Management, stated that ACI had distributed all its assets to shareholders, that ACI had no remaining assets, and that ACI was not party to any litigation or administrative proceeding. When assisting ACI in compiling answers for the Form N-8F, Advance Capital Management did not take measures to ensure the relevant information concerning class action lawsuit payments was included in the Form N-8F. As a result, ACI failed to disclose that claims had been submitted on behalf of the Funds in several class action lawsuits, that the Funds were still receiving distributions from class actions, or that those claims were still pending resolution with potential distributions to the class. The Commission approved ACI's application for deregistration on May 24, 2017.

10. In April 2017, Advance Capital Management began tracking the class action claims proceeds it was continuing to receive. In July 2017, Advance Capital Management created a compliance policy that allowed Advance Capital Management to keep the proceeds of ACI's class action claims as reimbursement for the costs, including those in excess of the expense limitation, that Advance Capital Management had incurred in liquidating the Funds and closing ACI. Advance Capital Management determined that if the proceeds "exceeded the total expenses paid by the adviser, [Advance Capital Management] will determine how to allocate the excess proceeds."

Violation

11. Section 34(b) of the Investment Company Act makes it unlawful for any person to make any untrue statement of material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or for any person filing, transmitting, or keeping such document to omit to state therein any fact necessary in order to prevent the statements made therein from being materially misleading. A violation of Section 34(b) does not require a finding of scienter. *In the Matter of Fundamental Portfolio Advisors, Inc.*, Advisers Act Rel. No. 2146, Investment Company Act Rel. No. 26099 (July 15, 2003) (Commission Opinion). As a result of the conduct described above, Advance Capital Management caused ACI to violate Section 34(b) of the Investment Company Act.

Disgorgement and Civil Penalties

12. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Advance Capital Management's net profits from its violations and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

Remedial Efforts

13. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent. Advance Capital Management also took remedial steps including modifying its compliance processes, policies, and procedures.

IV.

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

Accordingly, pursuant to Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act.

B. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$599,953 as follows:

(i) Respondent shall pay disgorgement of \$300,000 and prejudgment interest of \$99,953, consistent with the provisions of this Subsection B.

(ii) Respondent shall pay a civil penalty of \$200,000, consistent with the provisions of this Subsection B.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest paid by Respondent described above for distribution to affected investors (i.e., those former shareholders of the Funds who were financially harmed by the practices detailed above (hereinafter, "Affected Fund Investors")). 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent 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 Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(iv) Within ten (10) days of the entry of this Order, Respondent shall deposit \$599,953 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment

into the account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

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

(vi) Respondent shall distribute from the Fair Fund an amount based on the financial harm incurred by the Affected Fund Investors between March 31, 2017, and the date of this Order due to the practices discussed above, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. To the extent the total amount of financial harm to Affected Fund Investors exceeds the amount of the Fair Fund, Respondent will calculate and distribute a *pro rata* percentage of the Fair Fund to each Affected Fund Investor based on the Affected Fund Investor's *pro rata* financial harm during the period. The Calculation shall be subject to a *de minimis* threshold that is approved by the Commission staff. No portion of the Fair Fund shall be paid to any Affected Fund Investor account in which Respondent, or any of its current or former officers or directors has a financial interest.

(vii) Respondent shall, within ninety (90) days of the entry of this Order, submit the Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection B.

(viii) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each Affected Fund Investor. The Payment File should identify, at a minimum: (1) the name of each Affected Fund Investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the

amount of reasonable interest paid, if applicable. Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

(ix) Respondent shall disburse all amounts payable to Affected Fund Investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in paragraph (xiii) of this Subsection B. Respondent shall notify the Commission staff of the date[s] and the amounts paid in the distribution.

(x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an Affected Fund Investor or a beneficial owner of an Affected Fund Investor's account or any other factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in paragraph (xii) of this Subsection B is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the payor as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

(xi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund's

status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding payments to Affected Fund Investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act. Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xii) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to Affected Fund Investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection B. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred or credited to each Affected Fund Investor; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to Affected Fund Investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

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

By the Commission.

Vanessa A. Countryman
Secretary