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**STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION**

TO: Atlas Capital Management, Inc.
Tracy Dennis Towner
2625 Townsgate Road, Suite 200
Thousand Oaks, California 91361

DESIST AND REFRAIN ORDER

(For violations of sections 25235, 25238 and 25245 of the Corporations Code)

The Commissioner of Financial Protection and Innovation (Commissioner) finds:

1. At all relevant times, Atlas Capital Management, Inc. (Atlas) was a California Corporation formed on January 17, 1997 with a principal business address of 2625 Townsgate Road, Suite 200, Thousand Oaks, California 91361.
2. On or about September 12, 1997, the Commissioner issued an investment adviser certificate to Atlas (Central Registry Depository number 110018) pursuant to Corporations Code section 25230.
3. Craig Arsenault (Arsenault) was Atlas's co-owner and president from January 1, 2001 through at least December 31, 2018.
4. Tracy Dennis Towner (Towner) was Atlas's co-owner from January 1, 2001 through at least December 31, 2018. Towner became Atlas's sole owner on December 31, 2018.
5. On December 13, 2018, the U.S. Securities and Exchange Commission (SEC) filed a complaint in the United States District Court for the Central District of California (*SEC v. Craig Arsenault et al.* (Case No. 8-18-cv-02220)) alleging fraud by Arsenault and the two entities he founded, managed, and controlled -- Atlas and ACT Global Investments (ACT). The complaint alleged that Arsenault misrepresented the use of investors' funds in the ACT fund, provided clients with deceptive account statements that made it appear as if these investments were generating substantial income when they were not, and misappropriated and misused over \$1 million of the client money invested with ACT.

1 6. On March 4, 2019, subsequent to Atlas consenting to entry of judgment without
2 admitting or denying the allegations of the SEC’s complaint, the court entered judgment that
3 permanently restrained (and/or enjoined) Atlas, in connection with the purchase or sale of any
4 security, from employing any scheme to defraud, making material misrepresentations or omitting to
5 state material facts, and engaging in any transaction, practice or course of business which operates or
6 would operate as a fraud or deceit upon the purchaser, in violation of section 10(b) of the Securities
7 Exchange Act of 1934 and Rule 10b-5 thereunder, section 17(a) of the Securities Act of 1933, or
8 sections 206(1) and (2) of the Investment Advisers Act of 1940 (the SEC Judgment). The court also
9 ordered Atlas to pay disgorgement and/or a civil penalty to be determined at a later date upon motion
10 by the SEC.

11 7. On March 4, 2019, Atlas and Towner filed a report with the Commissioner disclosing
12 Towner as Atlas’s sole owner and chief executive officer.

13 8. On March 15, 2019, the SEC barred Arsenault from association with any broker,
14 dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or
15 nationally recognized statistical rating organization.

16 9. On March 4, 2019, Atlas, which was subject to the SEC judgment, and Towner, as
17 Atlas’s sole owner, violated Corporations Code section 25245 and California Code of Regulations,
18 title 10, section 260.241 by filing an amended form ADV with the Commissioner that falsely
19 answered “No” to Question H(1)(a) of ADV Part I, Item 11, which asks, “Has any domestic or
20 foreign court in the past ten years, enjoined you or any advisory affiliate in connection with any
21 investment-related activity.”

22 10. On or around April 2, 2019, less than one month after stipulating to the permanent
23 injunction in the SEC action, Atlas sent a letter to its clients that failed to disclose the SEC judgment,
24 the fact that the SEC could seek restitution and penalties against Atlas at a future date, and
25 Arsenault’s bar order. Instead, the letter misleadingly stated that Atlas had been “vetted, analyzed
26 and thoroughly reviewed by both the SEC and the California Department of Business Oversight.”

27 11. On or around August 25, 2019, the Commissioner commenced a regulatory
28 examination of Atlas’s investment advisory business (Regulatory Exam).

1 12. On or around June 9, 2020, the Commissioner notified Atlas of its requirement to: (1)
2 amend its ADV to disclose the SEC judgment; and (2) to inform existing and prospective clients of
3 any legal or disciplinary event that is material to an evaluation of the investment advisor’s integrity as
4 required by Corporations Code section 25235 and California Code of Regulations, title 10, section
5 260.235.4.

6 13. Even after being notified by the Commissioner of its duties, Atlas failed to promptly
7 inform its clients of the SEC judgment and filed two additional form ADVs on July 27, 2020 and
8 September 15, 2020, that continued to falsely respond “No” to question 11, in violation of
9 Corporations Code sections 25235 and 25245 and California Code of Regulations, title 10, section
10 260.235.4.

11 14. On or about June 2, 2022, the California Secretary of State terminated Atlas’s
12 corporate status after it filed articles of dissolution.

13 15. Atlas and Towner violated Corporations Code section 25235 and California Code of
14 Regulations, title 10, section 260.235.4 by failing to inform existing clients of the SEC action,
15 judgment enjoining Atlas from engaging in an investment related activity, the Arsenault bar order,
16 and the fact that the SEC could obtain disgorgement of ill-gotten gains and/or a civil penalty against
17 Atlas.

18 16. Under Corporations Code section 25238 and California Code of Regulations, title 10,
19 section 260.238, subdivision (h), investment advisers and natural persons associated with the
20 investment adviser do not promote fair equitable or ethical principles if they omit to state to any
21 advisory client or prospective advisory client, a material fact necessary to make the statements made
22 regarding the investment advisers’ qualifications, services, or fees, in light of the circumstances in
23 which they are made, not misleading.

24 17. Atlas and Towner violated Corporations Code sections 25238 and California Code of
25 Regulations, title 10, section 260.238, subdivision (h), by affirmatively stating that Atlas had been
26 “vetted” by both the SEC and the California securities regulator, implying a false sense of security
27 while failing to disclose the SEC action and judgment against Atlas, Arsenault’s bar order, and the
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1 fact that the SEC could subsequently file a motion for disgorgement and civil penalties which could
2 impact the Atlas's financial condition.

3 18. The Commissioner finds that Atlas and Towner engaged in an act, practice, or course
4 of business which is fraudulent, deceptive or manipulative, in violation of Corporations Code section
5 25235, subdivision (d), when they failed to disclose the judgment in Part I and Part II of the ADV on
6 three separate occasions from March 4, 2019 to March 30, 2022.

7 19. Under California Code of Regulations, title 10, section 260.235.4, the failure to
8 disclose to any client or prospective client all material facts related to a legal or disciplinary event
9 material to the evaluation of the adviser's integrity or ability to meet contractual commitments to
10 clients constitutes a fraudulent, deceptive, or manipulative act within the meaning of section 25235 of
11 the Corporations Code.

12 20. The Commissioner finds that Atlas and Towner violated California Code of
13 Regulations, title 10, section 260.235.4 when they failed to disclose to clients the March 4, 2019
14 judgment against Atlas and Arsenault, and the March 15, 2019 SEC judgment barring Arsenault from
15 association with any broker, dealer, investment advisor, municipal securities dealer, municipal
16 advisor, transfer agent, or nationally recognized statistical rating organization.

17 21. Under California Code of Regulations, title 10, section 260.235.4, subdivision
18 (a)(2)(b), it shall constitute a rebuttal presumption that a disciplinary judgment, order, or decree by a
19 court of competent jurisdiction against the adviser or management person within 10 years of the
20 judgement, order, or decree is material to the evaluation of the adviser's integrity or ability to meet
21 contractual commitments to clients and must be disclosed to clients promptly and to prospective
22 clients not less than 48 hours before entering into an oral or written investment advisory contract.

23 22. California Code of Regulations, title 10, section 260.238, subdivision (h), provides
24 that misrepresenting to any advisory client, or any prospective advisory client, the qualifications of
25 the adviser, its representatives or any employees, or omitting to state a material fact necessary to
26 make the statements made regarding the qualifications, services or fees, in light of the circumstances
27 under which they are made, not misleading, does not promote fair, equitable, and ethical principles.
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1 23. The Commissioner finds that Atlas and Towner violated Corporations Code section
2 25238 and California Code of Regulations, title 10, section 260.238, subdivision (h), when they
3 misrepresented to clients in their April 2, 2019 letter that Atlas had been “vetted, analyzed and
4 thoroughly reviewed by both the SEC and the California Department of Business Oversight” and
5 when they failed to disclose the March 4, 2019 judgments against Atlas and Arsenault, the March 15,
6 2019 SEC Bar Order against Arsenault, and that the SEC could obtain disgorgement of ill-gotten
7 gains and/or a civil penalty against Atlas.

8 24. Corporations Code section 25241, subdivision (a), requires every broker-dealer and
9 every investment adviser licensed under Corporations Code section 25230 to make and
10 keep accounts, correspondence, memorandums, papers, books, and other records and requires every
11 broker-dealer file financial and other reports as the commissioner by rule requires, subject to the
12 limitations of Section 15(h) of the Securities Exchange Act of 1934 with respect to broker-dealers
13 and Section 222 of the Investment Advisers Act of 1940 with respect to investment advisers.

14 25. California Code of Regulations, title 10, section 260.241.4, subdivision (a), requires
15 each licensed broker-dealer and each licensed investment adviser to, upon any change in the
16 information contained in its application for a certificate (other than financial information contained
17 therein) promptly file an amendment to such application setting forth the changed information.

18 26. The Commissioner finds that Atlas and Towner violated Corporations Code section
19 25241, subdivision (a), and California Code of Regulations, title 10, section 260.241.4, subdivision
20 (a), when they willfully failed to promptly file an Amended Form ADV Part 1 and ADV Part II
21 disclosing the March 4, 2019 judgments against Atlas and Arsenault and the March 15, 2019 Bar
22 Order against Arsenault, which were material facts which were required to be stated therein.

23 27. The Commissioner finds that Atlas and Towner willfully made untrue statements filed
24 with the Commissioner on March 4, 2019, July 27, 2020, and September 15, 2020, when they failed
25 to disclose the March 4, 2019 judgments against Atlas and Arsenault.

26 28. Based upon the foregoing, the Commissioner finds that Atlas Capital Management,
27 Inc. and Tracy Dennis Towner violated Corporations Code sections 25235, 25238, and 25245 and
28 title 10 of the California Code of Regulations sections 260.235.4, 260.238, 260.241.4, and 260.245,

1 by failing to promptly amend a report filed with the Commissioner to disclose material disciplinary
2 events, misrepresenting to the commissioner that it was not subject to an injunction when it was.

3 Pursuant to Corporations Code section 25532, Atlas Capital Management, Inc. and Tracy
4 Dennis Towner are hereby ordered to desist and refrain from violating Corporations Code sections
5 25235, 25241, 25238, and 25245 and California Code of Regulations, title 10, sections 260.235.4,
6 260.238, 260.241.4, and 260.245.

7 This Order is necessary, in the public interest, for the protection of investors and is consistent
8 with the purposes, policies, and provisions of the Corporate Securities Law of 1968.

9 Dated: October 21, 2022
10 San Francisco, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation



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12 By _____
13 MARY ANN SMITH
14 Deputy Commissioner
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