

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80560 / May 1, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17953

In the Matter of

BARCLAYS CAPITAL INC.

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Barclays Capital Inc. (“Barclays,” “Firm,” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of Barclays Capital Inc. (“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 the Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of the Order and the Offer, the Commission makes the findings set forth below.¹

Summary

These proceedings arise out of Barclays' failure reasonably to supervise traders so as to prevent and detect violations of antifraud provisions of the federal securities laws in connection with Barclays' secondary market purchases and sales of certain bonds known as non-agency residential mortgage-backed securities ("non-agency RMBS").² The trading that is the subject of the Order took place from June 2009 through December 2012 ("Relevant Period") and involved intra-day purchases and sales of non-agency RMBS to Firm customers. During the Relevant Period, traders on Barclays' non-agency RMBS desk, knowingly or recklessly made false or misleading statements to Barclays customers and/or charged Barclays customers undisclosed excessive mark-ups.³ Barclays had the means to monitor communications for false or misleading statements but failed to identify this misconduct. In addition, Barclays failed reasonably to detect and review whether its mark-ups for certain non-agency RMBS transactions were reasonable. Barclays maintained a compliance system during the Relevant Period that was designed to detect transactions with mark-ups above a certain threshold for further review, but that system was defective. As a result, Barclays did not detect and review excessive mark-ups on the intra-day trades in non-agency RMBS that are the subject of the Order.

Under the circumstances described above, Barclays failed reasonably to supervise for violations of antifraud provisions of the federal securities laws within the meaning of section 15(b)(4)(E) of the Exchange Act. In considering the charges brought and the relief imposed in this matter, the Commission has taken into consideration the significant cooperation that Barclays has provided throughout the investigation.

Respondent

1. Respondent is a Connecticut company with its principal place of business in New York, New York. It is a wholly owned subsidiary of Barclays PLC. It is and, during the Relevant Period, was a broker-dealer registered with the Commission.

¹ The findings herein are made pursuant to the Offer and are not binding on any other person or entity in this or any other proceeding.

² Non-agency RMBS are residential mortgage-backed securities that are sponsored by private entities and not government-sponsored entities.

³ A mark-up is the difference between the price charged to the customer for a security and the prevailing market price for that security. *E.g., Grandon v. Merrill Lynch & Co., Inc.*, 147 F. 3d 184, 189 (2d Cir. 1998). In the instant matter, the prevailing market price for the security involved in each of the transactions was Barclays' contemporaneous cost for the security. *See id.*

Relevant Persons

2. Yoon Seok Lee (“Lee”), from approximately September 22, 2008, through February 11, 2015, was employed as a trader on the RMBS trading desk at Barclays. During the Relevant Period, Lee was registered with the Financial Industry Regulatory Authority (“FINRA”) and held series 7 and 63 securities licenses. In February 2015, Barclays terminated Lee’s employment. Lee is 33 years old and resides in New York, New York.

3. David F. Wong (“Wong”), from approximately September 2008 through August 2014, was employed as a trader on the RMBS trading desk at Barclays. During the Relevant Period, Wong was registered with the Financial Industry Regulatory Authority (“FINRA”) and held series 7 and 63 securities licenses. In January 2016, Barclays terminated Wong’s employment. Wong is 35 years old and resides in New York, New York.

Background

4. During the Relevant Period, Barclays was a broker-dealer engaged in secondary market trading of non-agency RMBS. In trading non-agency RMBS, Barclays purchased the securities for its own account and then sold them from its own account to its customers. Barclays did not charge a commission on the trades. In many instances, the purchase and sale took place within minutes or hours and involved little or no risk to Barclays. The false or misleading statements led customers to accept less, or pay more, for securities than they otherwise might have accepted or paid. The profit that the Firm made on any given transaction instead came from the difference between the price at which the Firm sold securities and the price at which it had purchased them.

5. Also during the Relevant Period, Barclays had policies that prohibited its traders and salespersons from making false or misleading statements about the terms of transactions and from charging unreasonable mark-ups.

The Underlying Violations

6. The false or misleading statements and undisclosed excessive mark-ups that are the subject of the Order took place in the context of certain intra-day trades of non-agency RMBS. The excessive mark-ups resulted in unfair prices to customers as well as unreasonable profits to Barclays.

False or Misleading Statements to Barclays Customers

7. During the Relevant Period, former Barclays traders Lee and Wong, directly and indirectly, made false or misleading statements to Barclays customers in both the purchase and the

sale of non-agency RMBS.⁴ Among other things, they made false or misleading statements about the price at which the securities could be bought or sold; the amount of profit that Barclays would be making on individual trades; and, after Barclays had agreed to purchase securities from a seller and during negotiations with a potential buyer, whether Barclays still was in active negotiations with the seller.

8. In one instance, for example, Lee received from a customer an order to sell \$46,814,037 original face amount of a bond at a price of 101-00.⁵ Lee then sought to sell the bond to another customer. Throughout the ensuing negotiations, Lee made false or misleading statements to both the buyer and the seller, including

- a. misrepresenting to the buyer that the offer price was 102-08 “subject to call”⁶ rather than the 101-00 price that the seller had offered;
- b. misrepresenting to the seller that the bid price was 99-00 rather than the 99-16 price that the buyer had bid;
- c. at a time when Lee was negotiating to sell the bond at a price much higher than 100-02, misrepresenting to the seller that Lee could sell the bond for 100-02 and that Barclays wanted to make four ticks on the transaction; this led the seller to reduce to 99-30 the 100-00 price that, by then, the seller had determined it wanted to receive, so that Barclays could make four ticks on the transaction by buying the bond at 99-30 and selling it at 100-02; and
- d. shortly after agreeing to buy the bond for 99-30, misrepresenting to the buyer that it looked like the seller’s best price was 100-24.

Lee ultimately sold the bond for 100-20. Based on the then current face amount of the securities traded, the twenty-two ticks received by Barclays constituted profits of approximately \$247,000.

9. In another instance, Wong was negotiating the sale of \$17,500,000 original face amount of a bond to a buyer. Wong learned that Barclays already had purchased the bond at issue for a price of 44-08. Throughout the ensuing negotiations, Wong made false or misleading statements to the buyer, including

⁴ In some instances, Lee and Wong made false or misleading statements directly to customers. In other instances, they made false or misleading statements to Barclays salespersons, and the salespersons then communicated the false or misleading information to customers.

⁵ Prices of non-agency RMBS frequently were given in terms of dollars and then 1/32 increments. As such, a price given as “95-08” meant \$95.25 or \$95 and 8/32s. Each increment of 1/32 was referred to as a “tick.” A price of \$95.25, or 95-08, meant that a buyer would pay \$952.50 for \$1,000.00 face amount of a bond.

⁶ “Subject to call” is an industry expression that meant that, before the buyer could purchase the bond at the stated price, the trader would need to confirm the price with the seller.

- a. misrepresenting that the seller had given an offer of 52-16 for the bond when there was no such offer from the seller;
- b. misrepresenting that Wong was uncertain whether the buyer's 48-24 bid would induce the seller to lower its 52-16 offer;
- c. misrepresenting that the seller had rejected the buyer's 49-00 "all in" bid and had given a counter-offer of 51-16; and
- d. misrepresenting that Wong would try to "squeeze" a few ticks out of the seller.

Wong ultimately sold the bond to the buyer for 50-00. Based on the then current face amount of the securities traded, Barclays made profits of approximately \$840,000 on this transaction.

10. From the transactions in which Lee and/or Wong, directly or indirectly, made false or misleading statements to Barclays customers, Barclays made profits of at least of \$8,889,038.

11. The information about which Lee and Wong made the false or misleading statements was important to the investment decisions of the Barclays customers. Under these circumstances, their conduct resulted in violations of antifraud provisions of the federal securities laws.

Excessive Mark-Ups Charged to Barclays Customers

12. In addition to making false or misleading statements to Barclays customers, Lee and Wong at times charged customers mark-ups that bore no reasonable relationship to the prevailing market prices.⁷

13. In one instance, Lee purchased \$44,045,000 original face amount of a bond at a price of 43-16. On the same day, Lee sold the bond at a price of 52-16. The 52-16 price represented an intra-day mark-up of approximately 20.7% and profits to Barclays of approximately \$3,935,070.

⁷ Based on trade data furnished by Barclays, the average mark-up charged on Barclays intra-day non-agency RMBS transactions during the Relevant Period was less than one percent. This average is less than the average reflected in the data in the Trade Reporting and Compliance Engine ("TRACE") for intra-day non-agency RMBS trades that the Financial Industry Regulatory Authority developed and maintained. TRACE is a system through which broker-dealers report over-the-counter secondary market transactions in eligible fixed income securities. Trading in non-agency RMBS began to be reported in TRACE in or about May 2011.

14. In another instance, Wong purchased a total of \$90,000,000 original face amount of a bond at a price of 10-00. On the same day, Wong sold the bond at a price of 11-04. The 11-04 price represented an intra-day mark-up of 11.25% and profits to Barclays of approximately \$1,012,500.

15. Excluding four transactions in which Lee or Wong both charged excessive mark-ups and made false or misleading statements, Barclays made at least \$6,672,673 in unreasonable profits from transactions in which the Firm charged excessive mark-ups.

16. Lee and Wong did not disclose the excessive mark-ups to Barclays customers.⁸ That information would have been important to the investment decisions of the customers, particularly because of the opaque nature of secondary market trading in non-agency RMBS. Under these circumstances, their conduct violated antifraud provisions of the federal securities laws.

Barclays' Failure to Supervise

17. During the Relevant Period, Barclays had policies that prohibited traders and salespersons from knowingly or recklessly “misrepresenting any terms and/or conditions of a transaction,” and from “engag[ing] in behavior that is likely to create a false or misleading impression as to . . . price or value of a financial instrument.” The Firm also prohibited customer communications containing misrepresentations about the amount of profit Barclays earned on transactions. In addition, Barclays had policies that prohibited the charging of unreasonable mark-ups.

18. Barclays had procedures that provided for the review of electronic communications with third parties for violations of Firm policies. As reflected in paragraph 15. above of the Order, those policies prohibited, among other things, the communication of false or misleading information. Barclays failed reasonably to implement procedures for review of communications that reasonably would be expected to detect false or misleading statements to Barclays customers. During almost all of the Relevant Period, the market for non-agency RMBS was opaque because there was no public mechanism for capturing bid and offer prices. Because one of the compliance risks faced by a broker-dealer trading non-agency RMBS was that traders or salespersons might make false or misleading statements about pricing and other information to customers, Barclays needed to implement procedures reasonably designed to detect such false or misleading statements in order to address the risks arising from its business. Barclays' failure

⁸ Under the “shingle theory,” a broker-dealer “creates an implied duty to disclose excessive markups by ‘hanging out its professional shingle.’” *Grandon*, 147 F.3d at 192 (quoting *Banca Cremiti, S.A. v. Alex. Brown & Sons, Inc.*, 132 F.3d 1017, 1034 (4th Cir. 1997) (quoting Commission reply brief)). When a broker-dealer, without disclosure, charges a customer a mark-up that results in a price that is not reasonably related to the prevailing market price, the broker-dealer commits fraud. *Id.* at 190 (quoting *Bank of Lexington & Trust Co. v. Vining Sparks Securities, Inc.*, 959 F. 2d 606, 613 (6th Cir. 1992)). The examples of excessive mark-ups in paragraphs 11. and 12. above of the Order are not meant to suggest that mark-ups below the levels reflected in those examples could not be excessive.

reasonably to implement procedures for the review of customer communications meant that no one reviewed certain customer communications to determine whether traders and salespersons were making false or misleading statements to Barclays customers.

19. If Barclays reasonably had implemented procedures for the review of communications with customers, it could have determined that Lee and Wong had made false or misleading statements to customers about their non-agency RMBS transactions. Where, as here, there has been an underlying violation of the federal securities laws at a broker-dealer, the failure to have compliance procedures directed at that misconduct can be evidence of a failure reasonably to supervise. Barclays' failure reasonably to implement procedures for reviewing communications with customers constituted a deficiency in the performance of the Firm's supervisory responsibilities.

20. With respect to detecting and investigating possible excessive mark-ups, Barclays, during the Relevant Period, maintained an electronic monitoring system that was designed to alert Barclays' Compliance department if there was a mark-up of three percent or more on a transaction. As a result of a system error, however, during the Relevant Period, Barclays' electronic monitoring system generated alerts for only twenty-six intra-day non-agency RMBS trades that exceeded a three percent threshold. Barclays did not perform a meaningful review of the trades for which alerts were generated to determine whether the mark-ups were excessive.⁹ The failure to have a functioning system for detecting potentially excessive mark-ups on non-agency RMBS transactions represented another supervisory deficiency by Barclays. If the Firm had implemented a reasonable system for review of non-agency RMBS transactions with customers for potentially excessive mark-ups, the Firm likely could have detected and prevented the violations of the federal securities laws that resulted from the excessive mark-ups.

21. Lee and Wong were subject to the supervision of Barclays. By failing reasonably to implement procedures for reviewing their communications with customers and by failing to maintain a functioning system for detecting and preventing potentially excessive mark-ups, Barclays, within the meaning of section 15(b)(4)(E) of the Exchange Act, failed reasonably to

⁹ As a justification for accepting the mark-ups, Barclays referenced Financial Industry Regulatory Authority ("FINRA") mark-up and mark-down policies. Applicable FINRA policy provided that a mark-up or mark-down to a customer of no more than five percent generally was fair ("five percent guidance"). NASD rule 2440 (June 13, 2008); IM-2440-1 (June 13, 2008); IM-2440-2 (July 5, 2007). Subject to certain criteria, however, the term "customer" did not include a qualified institutional buyer ("QIB"), as defined in Securities Act of 1933 rule 144A, that was buying or selling a non-investment grade debt security. IM-2440-2(b)(9). Regardless of the applicability of the five percent guidance, the FINRA was explicit in stating that "[a] broker-dealer may also be liable for excessive mark-ups under the anti-fraud provisions of the Securities Act and the [Exchange] Act. *Mark-Ups on Debt Securities*, NASD Notice 07-28, 2007 WL 1668330, at *3 n.3 (June 5, 2007) (citations omitted). As such, notwithstanding that most of the Barclays customers in these transactions were QIBs and that most of the transactions were in non-investment grade debt securities, the QIB provision in the FINRA mark-up and mark-down policies did not provide a justification for allowing the excessive mark-ups that are the subject of the Order. Barclays was responsible for knowing that, irrespective of FINRA policy, the antifraud provisions of the federal securities laws applied to the non-agency RMBS transactions.

supervise, with a view to preventing violations of antifraud provisions of the federal securities laws by Lee and Wong.

Remedial Efforts and Cooperation Provided by Barclays

22. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Barclays and significant cooperation afforded Commission staff. Respondent has implemented certain procedures to prevent and detect the type of misconduct described above in the Order. With respect to false or misleading statements, Barclays to date, has implemented procedures for the review of electronic communications for the detection of potentially false or misleading statements to Barclays customers, has conducted training related to such conduct and the types of statements that are prohibited, and has incorporated training related to such conduct into the annual training provided to trading personnel. With respect to excessive mark-ups, Barclays has replaced the defective compliance system that was in place during the Relevant Period with another compliance system that is designed, among other things, to detect potentially excessive mark-ups and has included training on unreasonable mark-ups in the annual training provided to trading personnel.

23. Barclays has cooperated by, among other things, preparing and providing to Commission staff hundreds of chronologies of transactions involving the conduct that is the subject of the Order; preparing and producing trading data from the Relevant Period; identifying mark-ups charged by Lee and Wong; and making available relevant witnesses. The cooperation that Barclays provided helped enable Commission staff to direct the focus of the Commission's investigation and to shorten significantly the amount of time needed to conduct the investigation.

Ongoing Cooperation

24. Barclays agrees to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Barclays shall (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by Commission staff; (ii) use its best efforts to cause its officers, employees, and directors to be interviewed by Commission staff at such time as Commission staff may reasonably direct; (iii) provide any certification or authentication of business records of the company as may be reasonably requested by Commission staff; (iv) use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by Commission staff; and (v) consistent with all lawful obligations, maintain in strict confidence communications with Commission staff pursuant to this provision.

Undertakings

25. As set forth in paragraph 22. above of the Order, Barclays has implemented certain procedures to prevent and detect the type of misconduct described above in the Order. Barclays undertakes to review the procedures that it has implemented to prevent and detect the misconduct described in the Order to determine their effectiveness and, to the extent any or all of them are

determined to be ineffective, to replace them with other procedures. Barclays further undertakes to certify, in writing, compliance with the undertakings set forth in this paragraph 25. of the Order. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Commission staff. Barclays undertakes to provide a certification six months from the date of issuance of the Order and each six months thereafter until the undertakings have been completed.

26. Barclays, within the time frames discussed in paragraph 27. below of the Order, additionally undertakes to make payments to customers in the aggregate amount of approximately \$15,561,711 (“Remediation”), representing profits that Barclays earned on the intra-day trades in non-agency RMBS that are the subject of the Order. Barclays will be responsible for administering the payment of the Remediation to the affected Firm customers.

27. Barclays undertakes to

- a. deposit the amount of the Remediation into a segregated account such as a separate bank account (“Remediation Account”) within 10 days of entry of the Order and provide Commission staff with evidence of such deposit in a form acceptable to such Commission staff;
- b. submit to Commission staff, within 60 days of the date of entry of the Order, a disbursement calculation (the “Remediation Calculation”) that identifies (i) each customer or former customer that is eligible to receive a portion of the Remediation, (ii) the exact amount of that payment as to each customer or former customer, and (iii) the methodology used to determine the exact amount of that payment as to each customer or former customer;
- c. use best efforts to complete payment to all affected customers or former customers within 180 days of Commission staff’s approval of the Remediation Calculation; and
- d. within 150 days after Barclays has completed the disbursement of all amounts payable to affected customers and former customers, Barclays will submit to Commission staff a final accounting and certification of the disposition of the remediation, which final accounting and certification will be in a format to be provided by Commission staff. The final accounting and certification will include, but not be limited to, (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred or proof of payment made; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made for any reason; and (vi) an affirmation that Barclays has made payments to all affected clients and former clients in accordance with the

Remediation Calculation approved by Commission staff and the terms and conditions set forth above. Any and all supporting documentation for the accounting and certification will be provided to Commission staff upon request. Barclays will cooperate with any reasonable requests by Commission staff for information in connection with the accounting and certification.

In the event that the payments that Barclays makes to customers and former customers totals less than the remediation, Barclays shall include in the final accounting and certification an explanation of the reason(s) why the payments did not total \$15,561,711. Commission staff will evaluate the explanation. If the amount paid to customers and former customers totals less than the total amount of disgorgement ordered in section IV.B. of the Order (“Disgorgement Amount”), and Commission staff determines that the facts and circumstances support the amount Barclays paid to customers, Barclays, within thirty (30) days of that determination, will pay the difference between the amount paid to customers and former customers and the Disgorgement Amount to the Commission for transfer to the general fund of the United States Treasury, subject to section 21F(g)(3) of the Exchange Act. If, after discussions with Barclays representatives authorized to act on behalf of Barclays, Commission staff determines that Barclays has paid customers and former customers an insufficient amount, Barclays, within thirty (30) days of this determination, will pay customers and former customers the amount of the deficiency. If the total amount of the deficiency plus the amount Barclays previously paid customers and former customers (“Customer Payment Amount”) is less than the Disgorgement Amount, Barclays, within thirty (30) of this determination, will pay the difference between the Disgorgement Amount and the Customer Payment Amount to the Commission for transfer to the general fund of the United States Treasury, subject to section 21F(g)(3) of the Exchange Act. Compliance by Barclays with paragraphs 26. and 27. of the Order will satisfy the disgorgement and pre-judgment interest ordered below in section IV.B. of the Order.

28. Barclays agrees to be responsible for all of Barclays’ tax compliance responsibilities associated with the Remediation and will retain any professional services necessary. The costs and expenses of any such professional services will be borne by Barclays, and the payment of taxes applicable to the Remediation, if any, will not be paid out of Remediation funds.

29. Commission staff may extend any of the Remediation procedural dates set forth above for good cause shown. Deadlines for dates relating to the Remediation 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 to be the last day.

30. In determining whether to accept the Offer, the Commission has considered these undertakings as well as the remedial efforts and cooperation provided by Barclays.

IV.

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

Accordingly, pursuant to section 15(b) of the Exchange Act, it is hereby ORDERED that

A. Barclays is censured for failing reasonably to supervise within the meaning of section 15(b)(4)(E) of the Exchange Act

B. Barclays shall, within 180 days of the entry of the Order, pay to the Commission 1. disgorgement of \$2,930,829 and prejudgment interest of \$514,625 for the transactions that involved false or misleading statements made to Barclays customers and 2. disgorgement of \$6,672,673 and prejudgment interest of \$1,591,916 for the transactions that involved only excessive mark-ups charged to Barclays customers. The foregoing amounts shall be deemed satisfied by Respondent's payments directly to customers as described in paragraph 26. above of the Order. If timely payment is not made, additional interest shall accrue pursuant to Commission Rule of Practice 600.

C. Respondent shall, within ten days of the entry of the Order, pay a civil money penalty in the amount of \$1,000,000 to the Commission for transfer to the general fund of the United States Treasury, subject to section 21F(g)(3) of the Exchange Act. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) 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
- (3) 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 Barclays as the 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 Andrew B. Sporkin, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to the 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.

By the Commission.

Brent J. Fields
Secretary