

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80547 / April 28, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3867 / April 28, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17949

<p>In the Matter of</p> <p style="text-align:center">Mark Wentlent,</p> <p>Respondent.</p>

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mark Wentlent (“Wentlent” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Exchange Act, 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:

A. SUMMARY

1. These proceedings arise out of L3 Technologies, Inc.'s ("L3") (formerly known as "L3 Communications Holdings, Inc.") improper recognition of \$17.9 million in revenue at its Army Sustainment Division ("ASD") subsidiary in 2013 and Q1 2014. The improperly recognized revenue was related to unresolved claims under a fixed-price aircraft maintenance contract between ASD and the U.S. Army, referred to as the C-12 Contract.

2. In late December 2013, the VP of Finance at ASD ("VP of Finance") instructed a subordinate to create 69 invoices related to disputed claims under the C-12 Contract in L3's internal accounting system ("SAP"), and withhold delivery of those invoices from the U.S. Army. However, other than a handful of invoices that were delivered to the U.S. Army in early 2014, the vast majority of these invoices were never submitted to the U.S. Army, but instead were discovered during an investigation of ASD's finances approximately six months later. By entering the invoices in SAP, ASD improperly recognized approximately \$17.9 million in additional revenue at the end of 2013, and in Q1 2014.

3. Wentlent—the President of ASD—claims that he has little knowledge of accounting rules, but relied on the VP of Finance's assurances that he had approval from L3's corporate headquarters in New York ("L3 Corporate"), and from the VP of Finance and CFO of the Aerospace Systems segment of L3 ("Aerospace Systems CFO"), ASD's indirect corporate parent, to create the invoices, withhold delivery, and recognize the associated revenue. However, Wentlent—who was integrally involved in ASD's effort to recover revenue on the unresolved claims—decided to demote the VP of Finance during this time, which officially occurred in January 2014, and Wentlent disregarded certain red flags that should have put him on notice that the revenue was not properly recognized. Wentlent also helped procure a misleading e-mail from the Army which suggests—contrary to the truth—that the U.S. Army was prepared to accept invoices on the disputed claims.

4. On October 10, 2014, L3 filed a Form 10-K/A for the fiscal year ended December 31, 2013, and a Form 10-Q/A the first quarter of 2014. Among other things, L3 disclosed in its amendments that it was revising its financial statements to record aggregate pre-tax charges of \$94 million in the Aerospace Systems segment for periods prior to 2011 up to 2013, and approximately \$75 million for the first and second quarters of 2014. Of the adjustments, \$69 million were attributable to the C-12 Contract, and \$15.4 million of the adjustments were related to the improper revenue recognition related to the invoices.

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.

B. RESPONDENT

5. Wentlent, 67 years old, is a resident of Raleigh, NC. Wentlent began working for L3 in 2010, and served as President of ASD from September 2012 until his termination on July 30, 2014.

C. OTHER RELEVANT ENTITIES

6. L3, (NYSE ticker: LLL), a Delaware corporation with its principal place of business in New York, NY, is a prime contractor for various foreign and U.S. Government agencies, including the U.S. Department of Defense. L3's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. L3 is a prime contractor in aerospace systems and national security solutions. For fiscal year 2013, L3 reported net sales of \$12.6 billion and an operating income of \$1.2 billion on its consolidated statements of operations.

D. BACKGROUND

7. Aerospace Systems is one of four business segments of L3, delivering integrated solutions for the global intelligence market and providing maintenance and logistics support for a wide variety of aircraft and ground systems. Each business segment is comprised of multiple business "sectors," and each business sector is comprised of multiple business "divisions." Of relevance to this matter are the Logistics Solutions sector of Aerospace Systems, which provides, among other things, logistics support and aircraft maintenance services to its military customers, and ASD, a subsidiary of Logistics Solutions, which provides support for United States Army aircraft at bases throughout the United States and around the world.

8. L3, through its subsidiary Vertex, and later ASD, contracted to maintain a fleet of approximately 100 fixed-wing C-12 airplanes for the U.S. Army pursuant to the C-12 Contract. The contract had a five year term, commencing on June 2, 2010, and ending on January 31, 2015, with the partial initial year referred to as a "base year," and each subsequent year referred to as an "option year." Almost immediately after receiving the results of its first quarter of operations under the C-12 Contract, Vertex realized that it underbid for the contract, and that the margins going forward would be very low—in the range of 1-2%—creating significant obstacles for Vertex's management. ASD was formed at the beginning of 2013, in large part to take over the C-12 Contract from Vertex, and improve L3's performance under the contract. ASD, particularly ASD's VP of Finance, as well as others, worked through 2013 to resolve various issues with the C-12 Contract.

E. THE REVENUE RECOVERY INITIATIVE AND LEGAL ENTITLEMENT

9. In the summer of 2013, Wentlent, the VP of Finance, and others within ASD, learned that ASD had unaccounted for costs on its balance sheet related to the C-12 Contract in the range of \$30 to \$35 million. The C-12 Contract Business Manager ("C-12 Business Manager") believed the growth in that particular balance was a result of cost overruns that would result in a large loss to ASD. The C-12 Business Manager informed the VP of Finance of the costs, and prepared him for a meeting with Wentlent and the President of Logistics Solutions—the corporate parent of ASD—to discuss the potential loss.

10. On or about September 20, 2013, the VP of Finance, Wentlent, and the C-12 Business Manager reported to the President of Logistics Solutions that they had identified a growing work in progress (“WIP”) balance on ASD’s books arising from the C-12 Contract, and that the Division may need to write off some of the WIP (approximately \$8-9 million). The report angered the President of Logistics Solutions, and he asked members of ASD to re-check their numbers and verify that it was true. The President of Logistics Solutions also directed ASD to determine what work the WIP balance related to, and asked Wentlent, the VP of Finance and other members of ASD to determine how to bill it to the U.S. Army. The President of Logistics Solutions requested weekly—and later, daily—meetings with ASD officers, including Wentlent and the VP of Finance, to obtain a better understanding of the WIP balance. Wentlent and the VP of Finance were in constant communication with each other from September to December 2013 concerning the status of the review. During the September time period, the VP of Finance and Wentlent were aware that ASD would not meet its annual operating plan EBIT (Earnings Before Interest and Taxes), and it was also evident at the time that ASD was at risk of falling below the required EBIT threshold (i.e., 75% of plan) necessary for management to receive incentive bonuses.

11. Wentlent directed the C-12 Contract team at ASD to review the contract in detail to determine if there were items not billed to the Army that should have been billed. This became known as the Revenue Recovery Initiative. By mid-November 2013, the C-12 Contract Manager identified approximately \$50.6 million in work performed by ASD under the contract that was not billed to the Army. The \$50.6 million value was comprised of nine different work stream items and costs under the C-12 Contract.

12. During the fall of 2013, the focus of the Revenue Recovery Initiative turned to identifying ways to recognize revenue on the unbilled \$50.6 million. Based on the President of Logistics Solutions’ words and conduct, Wentlent and the VP of Finance believed that the President of Logistics Solutions expected ASD to achieve some accounting benefit on the \$50.6 million revenue recovery items by the end of 2013. On November 8, 2013, after reviewing operations review slides prepared by Wentlent, the President of Logistics Solutions sent an email (copying the VP of Finance) directing Wentlent to “please identify with coordination with [the VP of Finance and Aerospace Systems CFO], the C-12 Army accounting to be used for Q4, specifically, which costs will be deferred related to the claims, and take this accounting into consideration on your LRE [i.e. long range estimate] so we know where we expect to get to in EBIT for 2013.”

13. Also during the fall of 2013, certain individuals at ASD and Logistics Solutions began discussing the possibility of recognizing revenue on the \$50.6 million in claims based on a concept called “legal entitlement,” even though the claims had not been resolved with the Army. Wentlent and the VP of Finance both participated in discussions concerning the recognition of revenue based on legal entitlement.

14. On November 22, 2013, there was a conference call among the VP of Finance, the CFO of Aerospace Systems, and others to discuss certain options for how to record revenue pursuant to legal entitlement. The CFO of Aerospace Systems recalled that the task was for the C-12 Contract experts—i.e., the General Counsel of ASD and the General Counsel of Logistics Solutions—to find clauses in the C-12 Contract that entitled ASD to payment, show that the

government did not follow its obligations under the clauses, determine what to submit as a request for equitable adjustment (“REA”), and estimate based on the contract’s history how much the Army would pay. REAs were formal methods under the C-12 Contract by which ASD could request an equitable adjustment to the funding amounts for each Contract Line Item (“CLIN”).

15. At the VP of Finance’s request, the General Counsel of ASD and the General Counsel of Logistics Solutions estimated that ASD was likely to recover approximately \$30 million of the entire \$50.6 million, based on their history of negotiations with the government.

16. The VP of Finance recalls discussing three options with the President of Logistics Solutions and the Aerospace Systems CFO about how to address the revenue recovery items in November 2013: (1) record the transactions as inventory, increasing the WIP balance; (2) accrue the revenue associated with the legal entitlement issues; and (3) invoice the Army for amounts to which ASD believed it was legally entitled. While no contemporaneous documents corroborate the VP of Finance’s account that invoicing was considered, the VP of Finance further claims that he input the transactions in L3’s live SAP system to analyze and evaluate the output before a decision was made with respect to recording legal entitlement. After the analysis was complete, according to the VP of Finance, the transactions were reversed out of SAP.

17. In November 2013, a decision was made by Wentlent and the President of Logistics Solutions to reassign the VP of Finance from his role at ASD, based on his performance related to working through several accounting issues including disclosure statements. Wentlent notified the VP of Finance in early December 2013 of the decision, but kept him on in his role until the end of January 2014.

18. On December 3, 2013, Wentlent presented an operations review regarding ASD to the President of Logistics Solutions. Included was a slide entitled, “Army C-12 Contract Dispute Summary,” which listed a table of ten rows with separate “REA/Claim Values” adding up to \$50.6 million. A column on the table was entitled “Legal Entitlement” and applied a discount of either 50% or 60% to each claim value that comprised the \$50.6 million. The presentation also included detailed slides on six of the claims, and noted that ASD planned to meet with the government to reach an amicable resolution and that “[a]fter the negotiations with the government, L3 is postured to immediately invoice and bill the government.”

19. The revenue recovery claims were presented by ASD to the U.S. Army in meetings that took place in late November and early December 2013. On December 5, 2013, the C-12 Contract Manager and the General Counsel of ASD met with representatives of the U.S. Army to discuss the C-12 contract disputes. An email from the C-12 Contract Manager to the President of Logistics Solutions reporting on this meeting indicates that the U.S. Army planned to meet internally on December 17, 2013, and begin meeting with L3 after the new year with the “intent [] to resolve every one of the disputes outside of the REA/Claim process... as quickly as possible.” Nothing in the email indicates any request by the U.S. Army to invoice any of the claims before the end of the year. In fact, neither Wentlent nor the VP of Finance expected to resolve the disputes concerning the revenue recovery items by the end of 2013, and Wentlent did not expect to resolve some disputes until the end of 2014.

F. GENERATION OF INVOICES AND IMPROPER REVENUE RECOGNITION

20. In late December 2013, the VP of Finance approached the C-12 Business Manager and asked him to explain how revenue was recorded on ASD's books. The C-12 Business Manager told the VP of Finance that it was either billed or accrued. The VP of Finance subsequently asked the C-12 Business Manager at what point along the path revenue was recognized. With respect to the unresolved claims concerning the C-12 Contract, the C-12 Business Manager explained that in order to recognize revenue, a sales order must be created and then released to the Billing Clerk at ASD. The Billing Clerk then generated an invoice in SAP, at which point revenue was recognized on ASD's books. The invoice was then supposed to be submitted into Wide Area Work Flow ("WAWF"), which transmits invoices to the customer, but the submission of the invoice into WAWF did not have to occur in order for ASD to recognize revenue.

21. The VP of Finance and the Aerospace Systems CFO had a telephone call on or about Friday, December 20, 2013. The VP of Finance claims they discussed a one-page list of the revenue recovery claims that he purportedly emailed the Aerospace Systems CFO prior to the call. The VP of Finance claims that he and the Aerospace Systems CFO went down the list and the Aerospace Systems CFO instructed him on which items to invoice and which to accrue. The Aerospace Systems CFO denies giving the VP of Finance blanket authority to invoice for the claims, but does recall a conversation in which he told the VP of Finance that he could invoice for work performed during option year 3 (i.e., 2013).

22. On Monday, December 23, 2013, the VP of Finance emailed the C-12 Business Manager "billing amounts" for seven of the revenue recovery items. The C-12 Business Manager emailed ASD's Controller, copying the C-12 Contract Manager and the VP of Finance, asking the individual to "[p]lease add planned revenue . . . for the revenue recovery billings that I did today," and further stating, "I believe the current course of action is that they are not to be released to the government."

23. To physically generate the invoices, ASD had to seek the assistance of Vertex's Shared Services department in Madison, AL, because ASD's invoicing specialist was out of the office. Two clerks in Vertex's billing department indicated that not entering invoices through WAWF was unusual, and one conferred with a supervisor, the Controller of Vertex. The Controller of Vertex had seen this type of practice on other smaller accounts while working for an audit firm, but he had never seen it at L3 and recognized that not submitting the invoices through WAWF would violate certain "work procedures." The Controller of Vertex called the VP of Finance, and the VP of Finance said that based on an agreement with the U.S. Army, ASD and the U.S. Army were going to negotiate each invoice before submitting it through WAWF. The Controller of Vertex was appeased by this conversation, and 69 invoices were generated in SAP, but withheld from WAWF, causing ASD to recognize approximately \$17.9 million in revenue, without delivery of the related invoices to the Army by WAWF.

24. The C-12 Business Manager reported concerns with the VP of Finance's invoicing request to the C-12 Contract Manager on Friday, December 27, 2013, in a conversation that was memorialized in an email that night:

It appears as though [sic] the Revenue Recovery items are being handled outside of the L-3 corporate policy...I know that a revenue accrual the size of the one that it would take to account for the Revenue Recovery would require Corporate approval. To avoid that Corporate approval, we have been directed to cut invoices through the billing system, but not send the invoices to the government. I believe that is being done to avoid Corporate policy and try to “hide” this from the auditors. I could be mistaken, but this doesn’t pass the smell test.

25. That same day, the C-12 Contract Manager had a conversation with the VP of Finance in which he relayed the C-12 Business Manager’s concerns, and also noted that certain employees were concerned regarding “invoice directives” from ASD. The VP of Finance explained, as the C-12 Contract Manager later wrote in a report to L3’s ethics office (“Ethics”), that:

[I]nvoicing in SAP with no immediate intent to extend the invoice to the Government was a “technique” to utilize since New York had forbid [ASD] to accrue the designated Army C-12 Revenue Recovery amounts. This technique had the same year and effect on the financials that accrual would have had—potentially up to \$18M revenue and associated EBIT recognition. I asked [the VP of Finance] if this “technique” was known to and approved by New York. [The VP of Finance] answered that he did not know, but that Group had directed him to take this path. I asked if we had this direction in writing and the answer was no.

26. In that same December 31, 2013 email, the C-12 Contract Manager also reported on a conversation that occurred on Monday, December 30, 2013, stating:

Yesterday in a conversation with [the C-12 Business Manager] and the [ASD Controller] over year end close outs, [the VP of Finance], according to the [C-12 Business Manager], stated that the Army C-12 year end numbers needed to be whatever they had to be in order for Division to make \$40M EBIT. I’m sure [the VP of Finance] meant something other than how the comment was taken. However, we, and especially the CFO, need to be careful with what we say—in particular in this current environment.

27. Wentlent was on vacation in Antarctica from December 9 to December 23, 2013. His first day back in the office was after the Christmas holiday, on or around December 27, 2013. The recognition of revenue on the C-12 Contract was a priority of Wentlent’s, driven by his perception that the President of Logistics Solutions wanted the revenue recognized by the end of 2013, and by the fact that without the additional revenue, ASD would likely fall short of meeting its annual plan. Thus, upon returning to the office from vacation, Wentlent asked the VP of Finance how things were going with the year-end close out. The VP of Finance informed Wentlent that L3 Corporate would not allow ASD to record revenue on the revenue recovery items a certain way, but that he came up with an alternative method, and that corporate had approved his method. Despite having been told by the President of Logistics Solutions to coordinate the accounting with the Aerospace Systems CFO, and knowing that the VP of Finance had been performing unsatisfactorily, Wentlent did not take any steps to confirm that the Aerospace Systems CFO or L3 Corporate approved of the VP of Finance’s methods.

28. Late in the evening on Monday, December 30, 2013, Wentlent emailed the President of Logistics Solutions stating that the end of year close is “going well” and “December’s numbers will be a little better than STF [short term forecast].” He further noted “[s]ales are up \$11.4 M the major driver is C-12 and the posting to account for the revenue recovery.” Although it was unclear at that time whether ASD would meet the required 75% of their plan to make bonuses (in part because the financial statements were not yet finalized with all accruals posted), the additional revenue recognized by ASD in late December 2013 allowed ASD to achieve the 75% threshold. Consequently, the VP of Finance received a bonus of \$62,100 on a base salary of \$189,673, and Wentlent received a bonus of \$183,500 on a base salary of \$258,654, each attributable to ASD achieving 75% of plan. Both of these bonuses were later rescinded by L3.

G. JANUARY 2014 ISSUES REGARDING ACCRUALS AND INVOICES

29. As part of the year-end close, the VP of Finance also requested that the Business Manager on the C-12 Contract enter \$8.8 million of accruals related to three revenue recovery items. In connection with these accruals, the CFO of Aerospace Systems sought approval from the head of audit and the L3 Corporate Controller to reverse costs charged in prior option years based on anticipated recovery from the government.

30. The L3 Corporate Controller did not allow the accrual of these items. As the Aerospace Systems CFO explained to the VP of Finance on January 7, 2014, “[b]ased on consultation with [the L3 Corporate Controller and another individual from L3 corporate] ... the following needs to take place: 1. reverse the [\$8.8M] entries []...[and] Record as billed A/R and revenue the Option Year 3 amounts that are approximately \$2.8M for the PMO Support and \$450k for the Reduced Payments.” The Aerospace Systems CFO further explained, “[t]he reversal of cost of sales charged in prior option years is not allowed under SAB [Staff Accounting Bulletin] 104, so we will not be allowed to pick up that profit.”

31. The Controller’s office requested through the Aerospace Systems CFO that ASD obtain a letter from the U.S. Army indicating that ASD had permission to bill for the \$3.2 million Option Year 3 claims. In connection with seeking this letter, the VP of Finance received from the C-12 Contract Manager two separate email chains from late December and early January, neither of which the VP of Finance had been copied on previously, discussing whether L3 should invoice for all of the revenue recovery items (i.e., not just the \$3.2 million). Both email chains suggest that the U.S. Army intended for L3 to send invoices that would be paid if justified or denied. In one of the email chains, the C-12 Contract Manager specifically asks, “[j]ust to be clear . . . are you telling me to invoice (bill) the government for what we believe we are owed to start the conversation? Or are you telling me to file a claim? I see those as two different actions.” The response was, “I think the first step is to invoice the Government, then a claim will follow if the invoice is denied.” Neither email chain mentioned invoicing in L3’s SAP system but withholding the invoice from the U.S. Army.

H. L3’s INVESTIGATION AND DISCOVERY OF IMPROPER ACCOUNTING

32. In June 2014 – approximately six months after the invoice allegations were first raised – L3 investigators discovered a billing supervisor at L3 had kept the hard copy revenue

invoices on a shelf in her office. The invoices had not been delivered to the U.S. Army, in violation of a specific internal control of L3 that required delivery of invoices.

I. RELEVANT PROFESSIONAL STANDARDS

33. Accounting Standards Codification 605-10-25-1 provides that revenue can be recognized when it is realized or realizable and earned. Consistent with the authoritative literature, paragraph (A)(1) of the Codification of Staff Accounting Bulletins, Topic 13: Revenue Recognition (which provided guidance on the C-12 Contract) states that collectability be reasonably assured and that the amount of revenue be fixed or determinable as conditions to recognizing revenue. By failing to deliver the invoices at the time, ASD's recognition of the \$17.9 million in revenue violated these standards and therefore did not comply with U.S. GAAP.

34. L3 filed its Form 10-K for the fiscal year ending December 31, 2013 on February 25 and its Form 10-Q for the quarter ending March 31, 2014 on May 1, 2014. These filings were inaccurate.

J. L3's REVISED FINANCIAL STATEMENTS

35. On October 10, 2014, L3 filed a Form 10-K/A for the fiscal year ended December 31, 2013, and a Form 10-Q/A the first quarter of 2014. Among other items, the amended filings disclosed that with respect to its Aerospace Systems segment, L3 identified and recorded pre-tax charges of \$60 million for 2013; \$25 million for 2012; \$5 million for 2011; \$4 million for periods prior to 2011; \$20 million for 1Q:14; and \$55 million for 2Q:14, for a total of \$169 million in the segment. Of the adjustments, \$69 million were attributable to the C-12 Contract due to "cost overruns inappropriately deferred, sales invoices inappropriately prepared, and the failure to timely and accurately perform contract estimates at completion and valuation assessments of inventories and receivables," at the Army Sustainment Division. Of the \$69 million, \$15.4 million in improperly recognized revenue was related to the creation of invoices related to disputed claims.

K. VIOLATIONS

36. As a result of the conduct described above, Wentlent caused L3's violations of Section 13(b)(2)(A) of the Exchange Act, which requires an issuer to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

37. As a result of the conduct described above, Wentlent violated Rule 13b2-1 of the Exchange Act, which prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account that the Exchange Act requires an issuer to maintain.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Wentlent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) of the Exchange Act, and Rule 13b2-1 thereunder.

B. Respondent Wentlent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment 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 Wentlent 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 Sanjay Wadhwa, Senior Associate Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281.

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, he shall not argue that he is entitled to, nor shall he 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 he 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary