

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10680 / September 5, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86889 / September 5, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4070 / September 5, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19422

In the Matter of

Daniel Khesin

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Daniel Khesin ("Khesin" or "Respondent") pursuant to Section 8A of the Securities Act of 1933

(“Securities Act”), Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

Summary

This matter involves multiple violations of the federal securities laws by certain former members of DS Healthcare Group, Inc.'s ("DS Healthcare" or the "Company") senior management, including Daniel Khesin, who was also DS Healthcare's chairman of the board and largest shareholder. During the first three quarters of 2015, Khesin, among others, acted to overstate DS Healthcare's revenues. This consisted of recognizing fictitious revenue; intentionally or severely recklessly overbilling a customer and crediting the customer in a later quarter; and authorizing sales practices, such as shipping products at the end of quarters with no reasonable expectation of payment at the time of shipment and when the customer was on an accounts receivable hold, improper bill and hold sales, improper consignment sales, and issuing DS Healthcare stock and discounts as incentives to place orders without disclosing the incentives to the Company's finance department so that they could be recorded in the Company's books and records. As a result, DS Healthcare's reported financial statements in its Forms 10-Q for the first three quarters of 2015, in its August 4, 2014 and June 2, 2015 Form S-3 Registration Statements, and in its May 1, 2015 S-8 Registration Statement were materially false and misleading. The Forms 10-Q for each of these periods contained false officer and Sarbanes-Oxley certifications signed by Khesin.

Khesin also made selective disclosures to certain persons associated with a broker or dealer and to DS Healthcare shareholders relating to earnings, sales and revenue forecasts, and information on pending and future acquisitions without the Company simultaneously disclosing the same information to the public. When some of the above conduct was discovered in early 2016, DS Healthcare's board of directors terminated Khesin's employment and removed him from the board. In reaction to those efforts, Khesin improperly solicited shareholders for voting proxies or consents, and used those consents to regain control of the Company, firing senior management and appointing new directors. Khesin also failed to file forms disclosing beneficial ownership of and transactions in DS Healthcare securities held by a trust benefiting his son where he served as the trustee.

Respondent

1. Khesin is 39 and resides in Boca Raton, Florida. From at least 2009 to January 2016, Khesin served as DS Healthcare's president, chief financial officer, and chairman of the board, after which he continued to serve as DS Healthcare's president and chairman of the board until June 2017. Khesin also served as the Company's chief executive officer from at least 2009 through the third quarter of 2015. Khesin oversaw DS Healthcare's hiring of a new chief executive officer and new chief financial officer in October 2015 and January 2016, respectively, both of whom held those positions until April 2016. Khesin again served as the Company's chief financial officer from April 2016 to September 2016, and chief executive officer from April 2016 to June 2017. Khesin resigned his positions as president, chief executive officer, and chairman of the board on June 2, 2017.

Other Relevant Entities

2. DS Healthcare is a Florida corporation organized in January 2007 and headquartered in Pompano Beach, Florida. The Company focuses on hair and personal care products. DS Healthcare's fiscal reporting is based on the calendar year. DS Healthcare disclosed in its 2013 and 2014 annual reports that it had material weaknesses in its internal control over financial reporting and warned that without developing or maintaining an effective system of internal controls, it may not be able to accurately report its financial results or prevent fraud. DS Healthcare's common stock ("DSKX") previously was registered pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ until December 23, 2016, when NASDAQ delisted the Company. DS Healthcare filed a Form S-3 Registration Statement on June 2, 2015 that went effective June 11, 2015 for the resale of securities previously issued to a consultant. DS Healthcare also filed a Form S-3 Registration Statement that went effective August 4, 2014 and a Form S-8 Registration Statement that went effective May 1, 2015. The above Forms S-3 and S-8 Registration Statements incorporated by reference the Forms 10-Q at issue. DS Healthcare terminated the registration of its securities with the Commission in 2018.

Background

3. DS Healthcare develops proprietary technologies and products for hair and personal care needs. The Company operates through a network of retailers across North America and international distributors. Throughout 2015, DS Healthcare experienced intensified pressure to increase sales due to the declining price of its stock and the pursuit of possible acquisitions, which were reliant, in part, on the value of its stock. This pressure led Khesin to improperly recognize revenue from sales that violated the Company's revenue recognition policies and departed from the accounting principles generally accepted in the United States ("GAAP").

4. During the relevant period, Khesin engaged in misconduct to increase DS Healthcare's reported revenues. This included: recognizing fictitious revenue; intentionally or severely recklessly overbilling a customer and crediting the customer in a later quarter; and authorizing sales practices, such as shipping products at the end of quarters with no reasonable expectation of payment at the time of shipment and when the customer was on an accounts receivable hold, improper bill and hold sales, improper consignment sales, and issuing DS Healthcare stock and discounts as incentives to place orders without disclosing the incentives to the Company's finance department so that they could be recorded in the Company's books and records. DS Healthcare recognized the revenue associated with the above sales practices at the time the products were shipped to the Company's freight forwarder in violation of DS Healthcare's revenue recognition policies, which also departed from the requirements of GAAP. Khesin signed officer and Sarbanes-Oxley certifications attesting to the accuracy and completeness of the Company's financial statements, which improperly included revenue attributable to the above transactions and sales practices.

DS Healthcare Recognized Fictitious Revenue

5. In 2015, Khesin and another DS Healthcare officer directed DS Healthcare's Mexico subsidiary ("DS Mexico") to recognize revenue for products that neither DS Mexico nor DS Healthcare sold. Specifically, in the second quarter of 2015, Khesin directed DS Mexico to record \$96,000 of revenue for sales of micro-needling devices that were sold and distributed by a separate company partially owned by DS Mexico's president. Khesin gave this direction because DS Healthcare needed the additional revenue to assist with a possible acquisition and to help increase the price per share of the Company's stock. Thereafter, with two weeks left in the third quarter of 2015 and the Company behind in its revenue goal by more than \$700,000, Khesin directed DS Mexico to record \$201,000 of revenue for the sale of additional micro-needling devices.

6. DS Healthcare's recognition of revenue relating to the micro-needling products constituted a departure from GAAP, as revenue recognition standards include, among other criteria, that revenue may only be recognized if there is persuasive evidence of a sales arrangement between DS Mexico or DS Healthcare and the ultimate purchaser of the products. Here, not only was there no persuasive evidence of a sales arrangement at the time of the transactions, but neither DS Healthcare nor DS Mexico owned or had possession of the micro-needling product inventory; had an agreement to sell or distribute the micro-needling products; or bore the risk of loss for the products; all of which would be required to recognize the revenue under GAAP.

DS Healthcare Intentionally or Severely Recklessly Overbilled a Consignment Sale to a Customer in China

7. At the end of the third quarter of 2015, DS Healthcare intentionally or severely recklessly overbilled a customer in China in order to generate higher revenues for that quarter. Specifically, in the last week of the third quarter of 2015, DS Healthcare entered three orders totaling \$201,708 for a new customer in China. DS Healthcare entered the orders at a high price, rather than the correct total price of \$44,796. And, the products ordered were to be paid for as they were sold, *i.e.*, on a consignment basis, based on an agreement the customer had with DS Healthcare's senior management. Khesin and another DS Healthcare officer approved the pricing and terms. Khesin knew or was severely reckless in not knowing that consignment sales were not permitted under DS Healthcare's revenue recognition policies. Having received emails on that subject by the Company's finance department as early as 2011, Khesin knew DS Healthcare could not recognize the associated revenue at the time the products were shipped because the customer was not obligated to pay until the products were sold. Despite that understanding, DS Healthcare recognized the revenue in the third quarter of 2015. And, Khesin certified the Company's financial statements, which included the entire, overbilled consignment sale. In a later quarter, Khesin authorized the pricing to be changed to a lower amount and issued a credit for the amount of the overcharge, *i.e.*, \$156,912. DS Healthcare departed from GAAP by intentionally or severely recklessly overbilling the customer and issuing a credit for the overcharged amount in a subsequent quarter, and by recognizing the revenue from the sale at the time of shipment of the products rather than at the time the customer sold the products.

DS Healthcare Improperly Deployed Other Sales Practices to Increase Revenue

8. During the first three quarters of 2015, Khesin authorized or permitted: the shipment of products at the end of quarters with no reasonable expectation of payment at the time of shipment as required by GAAP and when the customer was on an accounts receivable hold; improper bill and hold sales that did not pass the risk of ownership to the customer at the time of shipment and which did not have a fixed delivery schedule as required by GAAP; and improper consignment sales that recognized revenue at the time of shipment even though collectability was not assured as the customer was not obligated to pay for the products until they were ultimately sold as required by GAAP. Khesin also authorized the issuance of DS Healthcare stock and discounts as incentives to specific customers in an effort to meet DS Healthcare's revenue projections and goals without accounting for those issuances and discounts in the Company's books and records. All but one of these customers were under a credit and/or an accounts receivable hold, requiring advance payment to ensure collectability. DS Healthcare recognized more than \$600,000 in revenue from these transactions at the time of shipment even though doing so was a departure from GAAP and contrary to the Company's revenue recognition policies.

9. Khesin knew or was severely reckless in not knowing the above sales practices as implemented did not comply with the Company's revenue recognition policies, having received emails and guidance from the finance department as far back as 2011 and 2012. As a result of the improper recognition of the above revenue, DS Healthcare materially overstated its net revenue, gross profit, and accounts receivable in the first three quarters of 2015. DS Healthcare also materially overstated its operating income and understated its net loss in the second quarter of 2015, and understated its operating and net losses in the first and third quarters of 2015. DS Healthcare also materially misrepresented the same metrics when it incorporated by reference its first through third quarter 2015 financial statements in its August 14, 2014 and June 2, 2015 Form S-3 Registration Statements, and in its May 1, 2015 Form S-8 Registration Statement.

10. On March 23, 2016, following the initiation of an independent investigation by a law firm hired by the Company's audit committee, DS Healthcare reported in a Form 8-K, among other things, that its financial statements for the second and third quarters of 2015 should no longer be relied upon. DS Healthcare's stock fell approximately 35% on the news to close at \$.86 per share on March 24, 2016. DS Healthcare subsequently restated, among others, its financial statements for the first three quarters of 2015, materially decreasing its quarterly net revenues. This had the result of increasing its losses for these periods by 921%, 979%, and 43% to \$869,546, \$103,102, and \$819,436, respectively. As DS Healthcare's president, chief executive officer, chief financial officer, and chairman of the board, Khesin was one of the individuals responsible for preparing, reviewing and commenting on the Company's public filings. Khesin also was responsible for signing officer and Sarbanes-Oxley certifications relating to, among others, the accuracy of the financial statements and results of operations and the lack of knowledge of fraud involving management or other employees with a significant role in the Company. Based on his knowledge and role in the above transactions, Khesin knew or was severely reckless in not knowing DS Healthcare's reported financial statements were

materially inaccurate and not in compliance with GAAP, and that his certifications were false at the time he signed them. Likewise, Khesin caused the falsification of DS Healthcare's books and records, and failed to devise and maintain a sufficient system of internal accounting controls.

False Representations to DS Healthcare's Auditor

11. For each of the quarters that were restated, Khesin represented to the Company's auditor, among other things, that DS Healthcare's financial statements were prepared and fairly presented in conformity with GAAP; all financial records and related data were made available to the auditor; and the Company had not received any communications, nor had knowledge of any fraud, allegations of fraud, or suspected fraud. Based on his knowledge and role in the above transactions, Khesin knew or was severely reckless in not knowing those representations were false at the time he made them.

Selective Disclosure of Material, Non-Public Information

12. On multiple occasions during Khesin's tenure, he selectively disclosed material, non-public information relating to earnings, revenue and sales forecasts, and pending and future acquisition plans to certain persons associated with a broker or dealer and to DS Healthcare shareholders. For example, Khesin regularly communicated with certain investors in 2016 via telephone and face-to-face meetings, providing forward-looking statements, and information about pending and future acquisitions before they had taken place and before they were disclosed to the public. During 2015 and 2016 Khesin also communicated Company earnings, revenue and sales forecasts, and acquisition efforts to certain investors without contemporaneously having the Company provide the same information to the public. Khesin did not obtain express agreements from the above individuals to maintain the confidentiality of the information conveyed. Khesin knew or was severely reckless in not knowing such communications were improper based on the Company's policies on disclosing material, non-public information to the public. DS Healthcare did not simultaneously disclose the information to the broader market.

Khesin Failed to Report DSKX Stock Transactions as Trustee of His Son's Trust

13. On December 29, 2014, Khesin created a trust and named himself the sole trustee and his young son the beneficiary. From March 2015 to at least February 2016, Khesin, on behalf of the trust, executed 29 transactions in DS Healthcare stock. Pursuant to the trust and the brokerage records, Khesin was the only person authorized to place trades on behalf of the trust. Despite being obligated to do so, Khesin did not file Forms 4 or 5 disclosing these transactions.

Khesin's Fight for Control of the Company

14. In March 2016 and based on some of the conduct described above, DS Healthcare's board of directors terminated Khesin's employment and removed him from the board of directors for cause. Khesin countered by taking steps to secure control of the Company. Specifically, Khesin sent voting agreements to more than ten persons on March 28, 2016, in order to get enough voting rights to give him majority control of the Company. The voting agreements purported to transfer to Khesin all voting rights to the underlying shares for a six-

month period. Khesin did not send a proxy statement or the information required to be in a proxy statement to the shareholders or file anything with the Commission prior to his solicitation of the voting agreements. By March 29, 2016, Khesin had received enough voting agreements to have voting power over 56% of DS Healthcare's common stock.

15. On March 31, 2016, Khesin filed the agreements with the Commission as exhibits to a Schedule 13D and announced that he had acquired voting power to change the board and management structure of the Company. Khesin filed a definitive proxy statement on Schedule 14A on April 4, 2016, in which he admitted he telephonically solicited proxy consents and sent the voting agreements to the shareholders he contacted on March 28, 2016, and that he sent the proxy statement to the shareholders on April 2, 2016. Khesin's oral solicitations were materially misleading and contained material omissions because he misrepresented why he had been fired and did not explain, among other things, that the Company had initiated an independent investigation relating to the transactions Khesin had been involved in.

16. The proxy statement, delivered to the shareholders after Khesin obtained voting control of their stock, identified the purpose of the proxy solicitation was to accomplish the "transfer of voting authority through proxy . . . for the purpose of replacement of the three current Board of Directors . . . and to bring about management changes. . . ." Khesin filed a Form 8-K on April 6, 2016, announcing that on March 31, 2016 DS Healthcare shareholders removed the three independent directors from DS Healthcare's board of directors. On April 22, 2016, Khesin filed a Schedule 14f-1 reporting the change in control and the future appointment of new directors to DS Healthcare's board of directors stemming from Khesin's use of the voting agreements. Khesin's solicitation and use of the voting agreements was improper because he obtained the voting agreements without providing the shareholders with a proxy statement complying with the requirements of Schedule 14A.

Violations

17. Securities Act Sections 17(a)(1) and 17(a)(3) and Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities, respectively.

18. Exchange Act Section 13(a) and Rule 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, quarterly and other reports as the Commission may require. Rule 13a-14 under the Exchange Act requires all periodic reports to include certifications personally signed by the issuer's principal executive officer and financial officers in the form specified in the applicable requirements.

19. Rule 12b-20 under the Exchange Act requires that, in addition to the information expressly required to be included in a statement or report filed with the Commission, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading.

20. Exchange Act Section 13(b)(2)(A) requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

21. Exchange Act Section 13(b)(2)(B) requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

22. Exchange Act Section 13(b)(5) prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2).

23. Rule 13b2-1 under the Exchange Act prohibits any person from directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A). Rule 13b2-2 under the Exchange Act prohibits any officer or director from directly or indirectly making or causing to be made a materially false or misleading statement to an accountant in connection with any audit, review, or examination of the financial statements of an issuer.

24. Regulation FD requires, among other things, that whenever an issuer, or anyone acting on its behalf, intentionally makes a selective disclosure of material, non-public information about the issuer to certain specified persons, including analysts and investors, the issuer is required to make a simultaneous public disclosure of that information.

25. Exchange Act Section 14(a) and Rule 14a-3 thereunder prohibits any person from soliciting a proxy without furnishing information specified by Schedule 14A, including financial statements meeting the requirements of Regulation S-X, management's discussion and analysis of financial condition and results of operations, among other things. Rule 14a-9 under the Exchange Act prohibits the use of proxy statements that are materially false or misleading.

26. Exchange Act Section 16(a) and Rules 16a-2 and 16a-3 thereunder require direct or indirect beneficial owners of more than ten percent of a class of securities registered under Section 12 of the Exchange Act, and directors and officers to file reports of ownership and changes of beneficial ownership with the Commission. Exchange Act Rule 16a-8 requires that if a trustee subject to Section 16 has a pecuniary interest in any holding or transaction in the issuer's securities held by the trust, such holding or transaction is attributable to the trustee and shall be reported by the trustee in the trustee's individual capacity.

Findings

27. Based on the foregoing, the Commission finds that Khesin: (i) willfully violated Securities Act Sections 17(a)(1) and 17(a)(3), Exchange Act Sections 10(b), 13(b)(5), 14(a), and 16(a) and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-3, 14a-9, 16a-3, and 16a-8 thereunder; and

(ii) willfully aided and abetted and caused DS Healthcare's violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and Rules 12b-20, 13a-13 thereunder, and Regulation FD.

28. Based on the foregoing, the Commission finds that by willfully violating Securities Act Sections 17(a)(1) and 17(a)(3), Exchange Act Sections 10(b), 13(b)(5), 14(a), and 16(a) and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-3, 14a-9, 16a-3, and 16a-8 thereunder, and willfully aiding and abetting DS Healthcare's violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and Rules 12b-20, 13a-13 thereunder, and Regulation FD, Khesin engaged in conduct subject to Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

Accordingly, it is hereby ORDERED that:

- A. Khesin shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), 14(a), and 16(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-13, 13a-14, 13b2-1, 13b2-2, 14a-3, 14a-9, 16a-3, and 16a-8 thereunder, and Regulation FD.
- B. Khesin be, and hereby is, prohibited for eight (8) years from the date of the Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.
- C. Khesin is denied the privilege of appearing or practicing before the Commission as an accountant.
- D. After eight (8) years from the date of this Order, Khesin may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing and practicing before the Commission as an accountant.
- E. Khesin shall within twenty-one (21) days of the entry of the Order, pay a civil money penalty in the amount of \$130,000 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). Payment shall be made in four installments of \$32,500 each as follows: the first installment of \$32,500 due within 21 days of the date of the entry the Order; the second installment of \$32,500 due within 120 days of the entry of the Order; the third installment of \$32,500 due within 240 days of the entry of the Order; and the fourth and final installment of \$32,500 due

within 360 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Khesin shall contact the staff of the Commission for the amount due. If Khesin fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

F. Payment must be made in one of the following ways:

- (1) Khesin may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Khesin 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) Khesin 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 Daniel Khesin 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 Eric R. Busto, Assistant Regional Director, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

G. 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.

Vanessa A. Countryman
Secretary