

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89177 / June 29, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19839

In the Matter of

BNP Paribas Securities Corp.,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND
21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against BNP Paribas Securities Corp. (“BNPP” or “Respondent”).¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

¹ On March 1, 2018, BNP Paribas Prime Brokerage, Inc. merged into BNP Paribas Securities Corp. The transactions discussed in this Order concern operations of BNP Paribas Prime Brokerage, Inc., from before the merger, when it was a corporate entity separate and distinct from BNP Paribas Securities Corp.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that

Summary

1. This matter concerns BNPP's violations of Rule 203(a)(1) of Regulation SHO, which prohibits lending shares to settle sale orders marked as "long." From April 2016 through July 2016, BNPP routinely loaned a hedge fund prime brokerage customer (the "Hedge Fund") securities on settlement date to settle purported "long" sales. These sale orders were all executed away from BNPP at another broker-dealer ("Broker-Dealer A") on behalf of the Hedge Fund.

2. On at least 35 occasions over a four-month period, the Hedge Fund³ submitted to Broker-Dealer A sale orders marked "long" for execution, and those sale orders subsequently were submitted to BNPP for clearing. But for each of those "long" sales, on the morning of settlement, the Hedge Fund did not have sufficient shares of the securities in its account at BNPP to sufficiently cover the sale order. BNPP served as the clearing broker for each of these transactions and was routinely alerted on the morning following the trade date that the Hedge Fund lacked sufficient shares in its BNPP account to cover the orders. Nonetheless, when the settlement date for each of those sale orders arrived and the Hedge Fund had not delivered sufficient shares to its account at BNPP to cover the sale, BNPP loaned the Hedge Fund shares to settle the sale. In total, BNPP loaned the Hedge Fund more than eight million shares in the securities of three different issuers to settle purported "long" sales that had been submitted to BNPP for clearing.

3. At the time of the Hedge Fund's "long" sale orders, BNPP did not take steps necessary to reasonably ascertain that the Hedge Fund owned the securities, nor did the Hedge Fund's assurances to BNPP reasonably inform BNPP that the Hedge Fund would deliver the securities to its BNPP account prior to the scheduled settlement date. Further, although the Hedge Fund routinely made assurances to BNPP that its orders were properly marked as "long" and that it would deliver the securities to its BNPP account prior to settlement date, it was not reasonable for BNPP to rely on such representations because BNPP was on notice of the Hedge Fund's repeated failures to deliver the securities to its BNPP account by settlement date. Instead, BNPP automatically loaned the shares to settle these "long" sales and did not conduct any analysis or consider the known facts and circumstances, including the Hedge Fund's history of failing to deliver enough shares to its BNPP account prior to scheduled settlement, to determine whether it would be reasonable to conclude that the Hedge Fund in fact owned the securities or would deliver them to its BNPP account prior to settlement.

² 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.

³ Certain conduct described in this Order was performed by the Hedge Fund's sub-investment advisor—and individuals and entities associated with the sub-investment advisor—on the Hedge Fund's behalf. References to the "Hedge Fund" in this Order include the Hedge Fund, its investment advisor, and its sub-investment advisor, and associated individuals and entities, engaging in conduct on the Hedge Fund's behalf.

4. For example, in April 2016, BNPP loaned the Hedge Fund shares to settle “long” sale orders in one security on eight consecutive trading days. In June and July 2016, BNPP loaned the Hedge Fund shares to settle “long” sale orders in another security on 16 consecutive trading days. On at least 19 occasions, BNPP loaned securities to the Hedge Fund to settle “long” sale orders while the Hedge Fund had outstanding loans of the same securities, which it had borrowed to settle prior “long” sales that previously had been submitted to BNPP for clearing. In light of the Hedge Fund’s conduct, it was unreasonable for BNPP to rely on the Hedge Fund’s statements that the Hedge Fund’s orders were properly marked “long” and that the Hedge Fund would deliver the securities to its BNPP account prior to scheduled settlement. Accordingly, BNPP could not avail itself of any exception to Rule 203(a)(1).

5. BNPP therefore violated Rule 203(a)(1) on at least 35 occasions when it loaned the Hedge Fund securities to settle sale orders marked as “long.”

Respondent

6. **BNP Paribas Securities Corp.** is a registered broker-dealer with the Commission. During the relevant period (April 2016 to July 2016), BNP Paribas Prime Brokerage, Inc. was incorporated in Delaware and headquartered in New York, NY, and was a broker-dealer registered with the Commission. On March 1, 2018, BNP Paribas Prime Brokerage, Inc. merged into BNP Paribas Securities Corp. The transactions discussed in this Order concern the operations of BNP Paribas Prime Brokerage, Inc. from before the merger, when it was a corporate entity separate and distinct from BNP Paribas Securities Corp. Respondent will be referred to herein as “BNPP.”

Background

7. During the relevant period, the Hedge Fund was an institutional prime brokerage client of BNPP. The Hedge Fund placed numerous sale orders for the common stock of Issuer A, Issuer B, and Issuer C, which were executed at Broker-Dealer A and cleared at BNPP. All of the sale orders were marked as “long” when executed by Broker-Dealer A, and they subsequently were submitted to BNPP as “long” sales for clearing. But, at the start of the settlement date for each of these “long” sales, the Hedge Fund did not hold sufficient shares in these securities in its account at BNPP to settle the trades. BNPP knew that these sales were effected pursuant to orders marked “long.”

8. On at least 35 occasions, prior to settlement date, the Hedge Fund did not deliver shares to its BNPP account to settle its “long” sale orders, and BNPP loaned the Hedge Fund shares in order to settle those trades.

9. BNPP knew that the shares of common stock of Issuer A, Issuer B, and Issuer C sold by the Hedge Fund were obtained pursuant to publicly disclosed convertible or exchange agreements with the issuers.

10. On numerous occasions, the Hedge Fund borrowed shares from BNPP to settle its

“long” sales on consecutive trading days. On more than 20 occasions, BNPP loaned the Hedge Fund shares for a period of multiple days. On at least three occasions, BNPP loaned the Hedge Fund shares for a period of at least six days before the Hedge Fund delivered sufficient shares to its BNPP account to settle “long” sales that previously had been submitted to BNPP for clearing. BNPP also loaned shares to the Hedge Fund to settle “long” sales when the Hedge Fund still owed BNPP shares that it had borrowed to settle prior “long” sales in the same security. In total, BNPP loaned more than eight million shares to the Hedge Fund to settle these 35 purported “long” sales during the relevant period.

BNPP’s Prime Brokerage Services and Stock Lending Policies

11. The Hedge Fund entered its orders through Broker-Dealer A’s electronic trading platform for execution. At the end of each trading day, the Hedge Fund submitted a file to BNPP with its daily trades for clearance and settlement through BNPP. Broker-Dealer A separately submitted, via Depository Trust Company (“DTC”), its own file memorializing the Hedge Fund’s daily trades to be cleared at BNPP. On the evening of trade date, a BNPP system reconciled the order information that it received from the Hedge Fund with the information that it received from Broker-Dealer A. Any discrepancies between those two files triggered a “trade break” alert, which was visible to certain BNPP operations employees on the morning after trade date. When the Hedge Fund sold securities “long” at Broker-Dealer A, those “long” sales were submitted to BNPP for clearing, and, in instances where the Hedge Fund held insufficient securities in its BNPP account to cover the “long” sale, BNPP’s system identified those trades as an “oversell” and triggered an alert. Once they were alerted to an “oversell,” BNPP operations employees sought and received confirmation from the Hedge Fund stating that the order at issue was in fact properly marked a “long” sale. BNPP’s middle office personnel then overrode the trade-break alert and permitted the trade to proceed as a “long” sale.

12. On the morning of settlement date, BNPP’s automated system monitored—on a net basis across all BNPP customers—whether the firm had sufficient securities in its customers’ accounts to meet BNPP’s net delivery obligations. Because BNPP settled its delivery obligations on a net basis, if a particular customer did not have enough shares in its BNPP account on settlement date to cover its “long” sale order, BNPP’s systems automatically would loan shares to cover that customer’s “long” sale. Before approving and loaning securities to the customer, BNPP did not consider the facts and circumstances regarding why that particular customer did not have enough shares in its BNPP account to cover its “long” sale order. Rather, unless an account executive intervened, BNPP’s stock lending desk automatically loaned sufficient shares to meet the customer’s “long” sale delivery obligation. In no instance did a BNPP account executive intervene and prevent a loan to the Hedge Fund.

BNPP’s Loans to Settle Long Sales in Issuer A

13. In January 2016 and April 2016, the Hedge Fund purchased senior unsecured notes from Issuer A and entered into exchange agreements with Issuer A pursuant to which the Hedge Fund could exchange its notes for common stock of Issuer A (collectively, the “Exchange Agreements”). On 14 trading days in April 2016, the Hedge Fund placed orders to sell common stock of Issuer A, using shares that the Hedge Fund purportedly had obtained pursuant to the

Exchange Agreements. That month, the Hedge Fund sold more than 1.2 million shares of Issuer A's common stock. All of these trades were marked "long," executed by Broker-Dealer A, and cleared by BNPP.

14. On nearly every occasion, when the "long" sales of Issuer A's common stock were submitted to BNPP for clearing, the Hedge Fund did not have a sufficient position in its account at BNPP to cover its sale. On 11 of the 14 trading days in April 2016 on which the Hedge Fund purportedly sold "long" Issuer A's common stock, the Hedge Fund failed to deliver to its BNPP account enough shares to settle the "long" sales by settlement date (during the relevant time period, three days after trade date, *i.e.* "T+3").

15. On each occasion, BNPP loaned the Hedge Fund the shares of Issuer A common stock to settle the "long" sales. In total, BNPP loaned the Hedge Fund more than 865,000 shares of Issuer A's common stock. The loans lasted for up to five days before the Hedge Fund delivered the shares to BNPP. On at least seven occasions, BNPP loaned the Hedge Fund shares of Issuer A's common stock to settle "long" sales, while BNPP's prior loans of Issuer A's common stock to the Hedge Fund (which BNPP had loaned to settle earlier "long" sales) were still outstanding.

BNPP's Loans to Settle Long Sales in Issuer B

16. In May 2016, the Hedge Fund entered into a securities purchase agreement, pursuant to which the Hedge Fund purchased a convertible note from Issuer B (the "Convertible Note"). On 41 trading days in May, June, and July 2016, the Hedge Fund placed orders to sell common stock of Issuer B, using shares that it had purportedly obtained pursuant to the Convertible Note. During that period, the Hedge Fund sold more than 11 million shares of Issuer B's common stock. All of these trades were marked "long," executed by Broker-Dealer A, and cleared by BNPP.

17. On six trading days in May, June, and July 2016 on which the Hedge Fund purportedly sold "long" Issuer B's common stock, the Hedge Fund failed to deliver sufficient shares to its BNPP account to settle the order by settlement date. On each occasion, BNPP loaned the Hedge Fund shares of common stock of Issuer B to settle the "long" sales. In total, BNPP loaned the Hedge Fund more than 2.53 million shares of Issuer B's common stock. The loans lasted for up to three days before the Hedge Fund delivered the shares to BNPP.

BNPP's Loans to Settle Long Sales in Issuer C

18. In June 2016, the Hedge Fund entered into a securities purchase agreement with Issuer C, pursuant to which the Hedge Fund purchased Issuer C's securities, including convertible preferred stock (the "Convertible Preferred Stock Agreement"). On at least 28 trading days in June and July 2016, the Hedge Fund placed orders to sell shares of common stock of Issuer C, using shares that it had purportedly obtained pursuant to the Convertible Preferred Stock Agreement. During this period, the Hedge Fund sold more than 8.3 million shares of Issuer C's common stock. All of these trades were marked "long," executed by Broker-Dealer A, and cleared by BNPP.

19. At the time the Hedge Fund submitted these “long” sales of Issuer C’s common stock to BNPP for clearing, it did not have a sufficient position in its brokerage account at BNPP to cover its sales. On 18 of the 28 trading days in June and July 2016 on which the Hedge Fund purportedly sold “long” Issuer C’s common stock, the Hedge Fund failed to deliver sufficient shares to its BNPP account to settle the trades prior to settlement date.

20. On each occasion, BNPP loaned the Hedge Fund shares of common stock of Issuer C to settle the purported “long” sales. In total, BNPP loaned the Hedge Fund more than 4.66 million shares of Issuer C’s common stock. The loans lasted for up to seven days before the Hedge Fund delivered the shares to BNPP. On at least 12 occasions, BNPP loaned the Hedge Fund shares of Issuer C’s common stock to settle “long” sales, while BNPP’s prior loans of Issuer C’s common stock to the Hedge Fund (which BNPP had loaned to settle earlier “long” sales) were still outstanding.

BNPP Could Not Reasonably Rely on the Hedge Fund’s Representations That It Owned the Shares Sold and Would Deliver the Shares Prior to Settlement

21. Before loaning the Hedge Fund shares of common stock of Issuer A, Issuer B, and Issuer C to settle purported “long” sales, BNPP was not reasonably informed by the Hedge Fund that the Hedge Fund owned the securities or that the Hedge Fund would deliver the securities to its BNPP account prior to settlement.

22. After the Hedge Fund’s sales of Issuer A, Issuer B, and Issuer C common stock were marked “long” and executed by Broker-Dealer A, the Hedge Fund consistently told BNPP that its orders were correctly marked as “long” and that it would deliver the securities to its BNPP account prior to the scheduled settlement. The Hedge Fund repeatedly failed to do so. In several instances, BNPP had information indicating that the Hedge Fund would not be able to deliver to its BNPP account sufficient securities to cover the “long” sales prior to the scheduled settlement of the transaction.

23. For example, during April 2016, as BNPP was attempting to settle the Hedge Fund’s purported “long” sale trades of Issuer A’s common stock, BNPP was aware of red flags that indicated that the Hedge Fund might not be able to deliver sufficient shares of Issuer A’s common stock in time to settle its “long” sale orders. On the day before the scheduled settlement of the Hedge Fund’s first purported “long” sale order of Issuer A’s common stock under the April Exchange Agreement, the Hedge Fund failed to deliver the shares to its BNPP account, despite representing to BNPP throughout the day that the Hedge Fund would do so. That same day, BNPP employees knew that a Hedge Fund representative was “yelling at the company [Issuer A] as we speak” to issue shares. The next day, BNPP loaned the Hedge Fund shares of Issuer A’s common stock to settle the Hedge Fund’s purported “long” sale.

24. Six days later, BNPP was aware of a pending buy-in⁴ for the Hedge Fund resulting

⁴ During a buy-in, a broker or dealer purchases or borrows securities of like kind and quantity for a customer’s account to close out a fail to deliver position. See Rule 204 of Regulation SHO.

from a purported “long” sale of Issuer A’s common stock. BNPP nonetheless loaned shares of Issuer A’s common stock to the Hedge Fund on that day to settle a subsequent “long” sale. Over the next four trading days, BNPP continued to loan the Hedge Fund shares of Issuer A’s common stock to settle “long” sale orders.

25. As another example, in June 2016, following the Hedge Fund’s first “long” sale order of Issuer C’s common stock, BNPP loaned the Hedge Fund nearly 150,000 shares of Issuer C’s common stock for three trading days before the Hedge Fund delivered the requisite shares to its BNPP account.

26. On 16 straight trading days, the Hedge Fund executed “long” sale orders of Issuer C’s common stock through Broker-Dealer A, with BNPP acting as the clearing broker. On the day following each of these trades, BNPP employees received a “trade break” notice alerting BNPP that the Hedge Fund had executed a sale for which it held insufficient shares in its brokerage account at BNPP. The Hedge Fund then represented, without providing any support, that the sales were “long” orders and that the shares would be “coming in.” On all 16 occasions, BNPP loaned the Hedge Fund shares to settle its sales, even though the Hedge Fund failed to deliver the shares to its BNPP account before the scheduled settlement date in every instance. BNPP was aware that the sale orders concerned common stock received pursuant to a convertible note agreement, and that the Hedge Fund consistently needed to borrow shares to settle such sale orders.

Remedial Efforts

27. BNPP has voluntarily undertaken remedial efforts concerning its stock lending practices for “long” sale transactions. Specifically, BNPP has implemented new policies and procedures to address situations in which a customer’s “long” sale transaction results in an “oversell” of the customer’s position in a security in its account at BNPP.

Legal Analysis

BNPP Violated Rule 203(a)(1) of Regulation SHO

28. Regulation SHO requires executing broker-dealers to mark sell orders of any equity security as “long,” “short,” or “short exempt.” 17 C.F.R. § 242.200(g).

29. If a broker-dealer knows or has reasonable grounds to believe that the sale of an equity security was effected pursuant to an order marked as “long,” then the broker-dealer is prohibited from lending or arranging for the loan of any security for delivery to the purchaser’s broker after the sale. 17 C.F.R. § 242.203(a)(1). This prohibition applies to broker-dealers, including clearing broker-dealers like BNPP.

30. This prohibition does not apply if the broker-dealer “knows, or has been reasonably informed by the seller, that the seller owns the security, and that the seller would deliver the security to the broker or dealer prior to the scheduled settlement of the transaction, but the seller failed to do so.” 17 C.F.R. § 242.203(a)(2)(ii).

31. In discussing this exception, the Commission has stated that “[i]t may be unreasonable for a broker-dealer to treat a sale as long where orders marked ‘long’ from the same customer repeatedly required borrowed shares for delivery or result in ‘failures to deliver.’” Short Sales, Exch. Act Rel. No. 34-50103 n.111. Broker-dealers have an “affirmative obligation to obtain and consider information from their own records and/or from the records of another source helpful to making the reasonableness determinations required” to rely on this exception and loan shares to its customer to settle long sales. Amendments to Regulation SHO, Exch. Act Rel. No. 34-60388 at n.33 (July 31, 2009). Such information includes “a customer’s prior assurances . . . [of] its share ownership, or delivery of shares by settlement date.” *Id.*

32. BNPP loaned securities to the Hedge Fund to settle “long” sales in violation of Rule 203(a)(1). The exception in Rule 203(a)(2)(ii) is available to certain brokers or dealers that know or have been reasonably informed by a customer that the customer owned the shares being sold, and that the customer would deliver the shares to the broker or dealer prior to the scheduled settlement of the transaction. While the Hedge Fund regularly confirmed to BNPP that the sales were properly marked “long” and that the Hedge Fund would deliver the securities to its BNPP account for settlement, after the Hedge Fund repeatedly required borrowed shares to settle trades for sale orders marked as “long,” it became unreasonable for BNPP to rely on the Hedge Fund’s representations. Moreover, BNPP’s automatic lending process did not factor this information when approving loans to the Hedge Fund. Thus, BNPP failed to meet its affirmative obligation to consider information regarding share ownership and delivery history, and continued to automatically lend shares to settle what had been submitted to BNPP as “long” sales.

33. As a result of the conduct described above, BNPP violated Rule 203(a)(1) of Regulation SHO by engaging in a pattern of loaning shares of Issuer A, Issuer B, and Issuer C common stock to the Hedge Fund to settle sale orders executed and marked as “long” by Broker-Dealer A after the Hedge Fund repeatedly failed to deliver shares to its BNPP account prior to settlement date. BNPP’s misconduct enabled the Hedge Fund to engage in a practice of potentially abusive “naked” short selling by continuously submitting short sales as “long” sales and evading other requirements of Regulation SHO, including the order marking, locate requirements, and circuit breaker rule for short sales.

Findings

34. Based on the foregoing, the Commission finds that BNPP willfully⁵ violated Rule 203(a)(1) of Regulation SHO promulgated under the Exchange Act.

⁵ “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

Undertakings

35. BNPP has undertaken to:
- a. Cooperate with any subsequent investigation by the Enforcement Division regarding the subject matter of this Order, and with any related enforcement action.

In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. BNPP cease and desist from committing or causing any violations and any future violations of Rule 203(a)(1) of Regulation SHO, promulgated under the Exchange Act.
- B. BNPP is censured.
- C. BNPP, shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the U.S. Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.
- D. 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 BNP Paribas Securities Corp. 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 Charles Cain, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

E. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary