

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93458 / October 29, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20638

In the Matter of

**FIXED INCOME CLEARING
CORPORATION**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 19(h) 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 19(h) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Fixed Income Clearing Corporation (“FICC” 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 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 19(h) 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.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

Summary

These proceedings arise out of violations by FICC of certain provisions of the federal securities laws and related rules, which are applicable to it as a registered clearing agency, concerning liquidity resources and reviews of margin models and parameters.² FICC serves as the sole central counterparty to process trades in securities issued by the federal government. It has been designated as a systemically important financial market utility ("SIFMU") pursuant to Section 804(a) of the Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). Clearing agencies, such as FICC, are an essential part of the infrastructure of the U.S. securities markets and, as such, they are required to be structured to manage and reduce risk. Disruptions to FICC's operations, or a failure by FICC to manage risk, could result in significant costs not only to FICC itself and its members, but also to other market participants or the broader U.S. financial system.

The U.S. Congress and the Commission have established a legal framework to facilitate the prompt and accurate clearance and settlement of securities transactions, having due regard for, among other things, the public interest, the protection of investors, and the safeguarding of securities and funds.

Certain provisions of Exchange Act Rule 17Ad-22(e), which was adopted by the Commission on September 28, 2016 with a compliance date of April 11, 2017, require FICC, as a registered clearing agency that meets the definition of a "covered clearing agency," to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, among other things: (1) holding sufficient qualifying liquid resources sufficient to meet a certain minimum liquidity resource requirement; and (2) conducting due diligence of its liquidity providers. Between the compliance date in April 2017 through November 2018, FICC failed to comply with certain of these provisions.

In addition, certain provisions of Exchange Act Rule 17Ad-22(b), which was adopted by the Commission on October 22, 2012 with a compliance date of January 2, 2013, require FICC, as a registered clearing agency, to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, use risk-based models and parameters to

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.

² FICC has two divisions: the Government Securities Division and a Mortgage-Backed Securities Division. All references to FICC and the findings herein relate to FICC's Government Securities Division.

set margin requirements and review the related risk-based models and parameters at least monthly, which FICC accomplishes in part through backtesting. In 2015 and 2016, FICC failed to comply with such provisions due to its continued use of a backtesting methodology containing two errors that had the effect of inflating its backtesting results.

Respondent

FICC is a New York corporation with its principal place of business in New York, New York. FICC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation. FICC is the sole central counterparty to process trades in securities issued by the federal government. The Commission granted permanent registration as a clearing agency to FICC pursuant to the Exchange Act on June 24, 2013, and as a registered clearing agency, FICC is a self-regulatory organization under the Exchange Act. On July 18, 2012, the Financial Stability Oversight Council approved the designation of FICC as a SIFMU pursuant to Section 804 of the Dodd-Frank Act. A financial market utility is deemed to be systemically important if “the failure of or a disruption to the functioning of a financial market utility . . . could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability” of the U.S. financial system.³ For purposes of the Dodd-Frank Act, the Commission is FICC’s supervisory agency. As such, the Commission is required by Section 807(a) of the Dodd-Frank Act to examine FICC at least once annually. At all relevant times, FICC has met the definition of “covered clearing agency” as defined under Exchange Act Rule 17Ad-22(a)(5).⁴

Facts

FICC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Hold Sufficient Qualifying Liquid Resources and to Undertake Due Diligence

1. Exchange Act Rule 17Ad-22(e)(7)(ii) requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by FICC by holding “qualifying liquid resources” sufficient to meet the minimum liquidity resource requirement under Exchange Act Rule 17Ad-22(e)(7)(i) in each relevant currency for which FICC has payment obligations owed to clearing members. The referenced minimum liquidity resource requirement in Exchange Act Rule 17Ad-22(e)(7)(i) is “sufficient liquid resources at the minimum . . . to effect same-day

³ 12 U.S.C. § 5462(9).

⁴ Prior to an amendment that became effective July 13, 2020, the definition of “covered clearing agency” in Exchange Act Rule 17Ad-22(a)(5) was a registered clearing agency that was designated as a SIFMU and “for which the Commodity Futures Trading Commission is not the supervisory agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 et seq.)” The amended definition of “covered clearing agency” is “a registered clearing agency that provides the services of a central counterparty or central securities depository.”

and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the [FICC] participant family that would generate the largest aggregate payment obligation for [FICC] in extreme but plausible market conditions” (the “Cover One Requirement”).

2. The term “qualifying liquid resources” is defined by Exchange Act Rule 17Ad-22(a)(14) to mean: (i) cash held either at the central bank of issue or at creditworthy commercial banks; (ii) assets that are readily available and convertible into cash through prearranged funding arrangements such as (A) committed arrangements without material adverse change provisions or (B) other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and (iii) other assets readily available and eligible for pledging to a relevant central bank if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency.

3. Exchange Act Rule 17Ad-22(e)(7)(iv) further requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to undertake due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has (A) sufficient information to understand and manage the liquidity provider’s liquidity risks and (B) the capacity to perform as required under its commitments to provide liquidity to FICC.

4. When adopting these rules, the Commission explained that “[m]arket participants ... are often linked to one another through intermediation chains in which one party may rely on proceeds from sales of cleared products to meet payment obligations to another party.” If a clearing agency is unable to meet its settlement or payment obligations because of a lack of liquidity, “consequences could include the default of a clearing member who may be depending on these funds to make a payment to another market participant, with losses then transmitted to others that carry exposure to this market participant if the market participant is depending on payments from the clearing members to make said payments to others.”⁵

5. With respect to uncommitted prearranged funding arrangements, the Commission explained that “the board of directors of a covered clearing agency generally should rely on rigorous analysis of the properties of a prearranged funding arrangement, in making a determination that it was highly reliable in extreme but plausible market conditions.”⁶ With respect to due diligence, the Commission explained that “‘due diligence’ has the same meaning as is commonly understood by market participants” and that a covered clearing agency “generally should not rely solely on representations made by a liquidity provider but instead should conduct

⁵ Standards for Covered Clearing Agencies, 81 Fed. Reg. 70786, 70870 (October 13, 2016).

⁶ 81 Fed. Reg. at 70822.

an assessment of the liquidity provider’s business, in light of the covered clearing agency’s own business and the composition of its existing liquidity providers.”⁷ The Commission further noted that “a covered clearing agency generally should consider the lower of the value of the assets capable of being pledged and the amount of the commitment (or the equivalent availability under a highly reliable prearranged facility) as the amount that counts towards qualifying liquid resources in the event there is any expected difference between the two.”⁸ FICC has been required to comply with these rules since April 11, 2017.

6. From April 2017 until November 2018, FICC sought to satisfy the bulk of its Cover One Requirement with 16 uncommitted Master Repurchase Agreements (“MRAs”) that it considered to be “qualifying liquid resources” in that they were uncommitted prearranged funding arrangements to convert securities it held into cash.⁹ During this period, however, FICC did not conduct analyses of the properties of the MRAs in making a determination that they would be highly reliable in extreme but plausible market conditions. Although FICC conducted analyses of the repurchase (or repo) market as a whole, none of these analyses concerned the reliability of the particular MRAs or the willingness of the MRA counterparties to provide liquidity to FICC through the MRAs in the amounts FICC would have required to meet its Cover One Requirement.

7. In addition, during this period, FICC did not conduct due diligence of the MRA counterparties in their capacity as liquidity providers regarding whether the MRA counterparties had sufficient information to understand and manage their risks and the capacity to perform to provide liquidity to FICC.

FICC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Review Its Risk-Based Margin Models and Parameters at Least Monthly

8. Exchange Act Rule 17Ad-22(b)(2) requires FICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to “[u]se margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.” The term “normal market conditions” is defined for purposes of this rule as “conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency’s exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time.”¹⁰

⁷ 81 Fed. Reg. at 70824.

⁸ 81 Fed. Reg. at 70824.

⁹ On November 15, 2018, FICC began to utilize a Capped Contingency Liquidity Fund as one of its qualifying liquid resources.

¹⁰ Exchange Act Rule 17Ad-22(a)(11).

9. The collection of margin is a critical component of a clearing agency's risk management in ensuring that it has sufficient financial resources in the case of a clearing member default.

10. When adopting this rule, the Commission noted that the practice of central counterparties was "to calculate daily margin requirements using risk-based models to ensure coverage at a 99% confidence interval over a designated time horizon" and that "the Commission believe[d] it [wa]s appropriate to codify this commonly accepted practice as the minimum benchmark for measuring credit exposures and setting margin requirements."¹¹ When proposing this rule, the Commission also explained that the one month review period for risk-based margin models and parameters "would limit the potential that such parameters or models will become stale"¹² FICC has been required to comply with Exchange Act Rule 17Ad-22(b)(2) since January 2, 2013.¹³

11. FICC uses backtesting to measure and review whether its risk-based models and parameters provide coverage at the 99% confidence interval over its designated time horizon of a 12-month rolling period. The Commission's Division of Examinations ("EXAMS") conducted an examination of FICC with respect to its margin models and backtesting that began on October 30, 2014 and covered the period of January 1, 2014 through March 30, 2015. During the examination, EXAMS flagged as deficiencies in need of correction, among other things, two errors in FICC's backtesting methodology that overstated FICC's backtesting coverage metrics. FICC had itself also identified these issues by early 2015. Nevertheless, from approximately June 2015 through December 2016, FICC continued to use the inaccurate backtests containing the two errors that inflated the results of the backtests.

12. FICC's reporting of backtesting results throughout this time period stated that FICC collected sufficient margin to cover its potential losses at greater than a 99% confidence interval. However, absent these two errors, FICC's backtesting results would have fallen below the 99% confidence interval in a total of ten months in 2015 and 2016. FICC did not implement changes to its backtesting methodology that would correct the errors until January 2017 and June 2017, respectively.

Violations

13. As a result of the conduct described above, FICC violated Exchange Act Rule 17Ad-22(e)(7)(ii), which requires that FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to meet

¹¹ Standards for Clearing Agencies, 77 Fed. Reg. 66220, 66226 (Nov. 2, 2012).

¹² Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472, 14478 (Mar. 16, 2011) (proposed rule).

¹³ Since April 11, 2017, FICC has been required to comply with 17Ad-22(e)(4), which contains additional requirements with respect to FICC's credit exposures to its participants.

the minimum liquidity resource requirement under Exchange Act Rule 17Ad-22(e)(7)(i) in each relevant currency for which FICC has payment obligations owed to clearing members.

14. As a result of the conduct described above, FICC violated Exchange Act Rule 17Ad-22(e)(7)(iv), which requires that FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to undertake due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks and the capacity to perform as required under its commitments to provide liquidity to FICC.

15. As a result of the conduct described above, FICC violated Exchange Act Rule 17Ad-22(b)(2), which requires that FICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.

16. As a result of the conduct described above, FICC violated Section 17A(d)(1) of the Exchange Act, which prohibits FICC from engaging in any activity in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

Undertakings

FICC has undertaken to:

17. No later than one year after the date of this Order, FICC shall (A) undertake a review of its existing policies, procedures, and internal controls for designating uncommitted liquidity resources as Qualifying Liquid Resources and (B) based upon that review, file with the Commission any necessary proposed rule changes (“Rule Changes”), pursuant to Section 19(b) of the Exchange Act, to establish and/or update policies and procedures that are designed to ensure that any designation of qualifying liquid resources is consistent with Rule 17Ad-22(a)(14)(ii)(B). Relatedly, with respect to any designation of an uncommitted arrangement as a Qualifying Liquid Resource pursuant to the definition provided under Rule 17Ad-22(a)(14)(ii)(B) and the effect such designation has on FICC’s compliance with Rule 17Ad-22(e)(7)(ii), FICC shall submit to the Commission any necessary Advance Notice pursuant to Section 806(e)(1) of the Dodd-Frank Act.

18. No later than six months after the date of this Order, FICC shall take all necessary steps to either: (A) establish a Regulatory Committee that would (i) operate separately from the current Audit Committee and Board Risk Committee, (ii) assume oversight responsibility for FICC’s efforts to demonstrate compliance with applicable laws and regulations, and (iii) meet no less frequently than on a quarterly basis; or (B) revise the charter and operations of the current Audit Committee to assume oversight responsibility for FICC’s efforts to demonstrate compliance with applicable laws and regulations.

19. Beginning with the establishment of a Regulatory Committee or revision of the Audit Committee charter (the “Designated Committee”), and continuing for a period of 3 years, FICC shall provide to such committee:

- a. copies of any deficiency letter (“Deficiency Letter”) received from the EXAMS staff within ten business days of receipt by FICC of a Deficiency Letter and a briefing on the Deficiency Letter at the next meeting of the Designated Committee;
- b. copies of any FICC response to a Deficiency Letter (“Response”) within ten business days of sending a Response; and
- c. a briefing on the Response and FICC’s action plans in response to any deficiencies identified in a Deficiency Letter at the next meeting of the Designated Committee after sending a Response, followed by additional briefings on at least a quarterly basis until remediation is complete. The briefings shall include descriptions of the status of all action plans to remediate any deficiencies identified in the Deficiency Letter and all steps remaining to be taken until remediation is complete. The briefings shall also include summaries of the results of impact analyses, if any, performed in connection with remediation action plans.
- d. For purposes of this paragraph, the required briefings can be provided in person, telephonically, or in writing, at the discretion of the Designated Committee.

20. One year after the completion of the review set forth in Paragraph 17(A), FICC shall retain, at its own expense, an independent compliance consultant (“Consultant”), not unacceptable to the Commission staff, to review and test FICC’s implementation of its written policies and procedures for compliance with Rule 17Ad-22(e)(7)(i), (ii), (iv), (v), and (vi) (excluding for purposes of this undertaking FICC’s review of models pursuant to subsections (vi)(B) and (C)), and identify areas for enhancement if appropriate. The Consultant shall be approved by the Board.

- a. FICC shall require the Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with FICC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with FICC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the completion of the engagement. FICC shall provide a copy of the engagement letter detailing the scope of the

Consultant's responsibilities to the staff of the Commission within three business days of its execution.

- b. FICC shall require the Consultant to submit written recommendations for improvement to the Designated Committee and to the Commission staff within 180 days of the start of the Consultant's review. FICC shall adopt and implement the recommendations made by the Consultant, subject to the following:
 - i. If FICC reasonably and in good faith determines that any of the recommendations are unduly burdensome or impractical, or if FICC determines that the objectives of the recommendations can be more effectively achieved through another means, FICC may propose that a recommendation not be implemented or an alternative reasonably designed to accomplish the same objectives, and it shall notify the Consultant of any such proposals within 14 calendar days of the report. If, upon evaluating FICC's proposal(s), the Consultant determines that any of the recommendations should not be implemented or that a suggested alternative is reasonably designed to accomplish the same objectives as the recommendation in question, then the Consultant may withdraw the recommendation and/or accept the proposed alternative, and FICC shall adopt and implement the accepted alternative(s). If, upon evaluating FICC's proposals, the Consultant determines that the Consultant's recommendation should be implemented, the Consultant shall notify FICC within 14 calendar days of receipt of the proposal, and FICC and the Consultant shall, within 7 business days of the Consultant's notification, jointly confer. In the event that FICC and the Consultant determine that they are unable to agree, Respondent and the Consultant shall jointly confer with the staff of the Commission to resolve the matter. In the event that, after conferring with the Commission staff, FICC and the Consultant are unable to agree on an alternative proposal, FICC shall implement the Consultant's recommendation.
- c. When FICC has implemented all of the Consultant's recommendations, FICC shall require its principal executive officer to certify as such in writing based on his or her knowledge after reasonable inquiry and provide written evidence in the form of a narrative, supported by exhibits sufficient to demonstrate compliance. FICC shall provide the certification to the Designated Committee and the staff of the Commission within seven business days of its execution.
- d. The reports by the Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole

discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

21. No later than one year after the date of the certification under paragraph 20.c.:
 - a. FICC shall review and test its efforts to demonstrate compliance with Rule 17Ad-22(e)(7) and identify areas for enhancement, if any, and prepare a report to the Designated Committee and to its Board describing such review and testing.
 - b. Within thirty days of providing each report to the Designated Committee and Board, FICC shall provide a copy to the staff of the Commission. Commission staff may make reasonable requests for further evidence of compliance, and FICC agrees to provide evidence in response to such requests.

22. FICC shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Richard Best, Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to Sections 19(h) and 21C of the Exchange Act, it is hereby ORDERED that:

A. FICC cease and desist from committing or causing any violations and any future violations of Section 17A(d)(1) of the Exchange Act and Rules 17Ad-22(b)(2), 17Ad-22(e)(7)(ii), and 17Ad-22(e)(7)(iv) promulgated thereunder.

B. FICC is censured.

C. FICC shall, within 21 days of the entry of this Order, pay a civil money penalty in the amount of \$8 million 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 FICC 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 Richard Best, Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

D. 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.

E. Respondent shall comply with the undertakings enumerated in Section III, Undertakings, paragraphs 17-22, above.

By the Commission.

Vanessa A. Countryman
Secretary