

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96444 / December 3, 2022

ADMINISTRATIVE PROCEEDING

File No. 3-21248

In the Matter of

ABB Ltd.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against ABB Ltd. (“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, Respondent admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This matter concerns violations of the anti-bribery, books and records, and internal accounting controls provisions of the Foreign Corrupt Practices Act of 1977 ("FCPA") by Respondent, as a result of bribes paid to a South African government official in connection with obtaining a contract worth approximately \$160 million. The scheme occurred from March 2015 through December 2017, and involved ABB executives at its Swiss headquarters and German and South African subsidiaries who used complicit third-party service providers to funnel payments to the South African official who awarded ABB the contract.

Respondent

2. **ABB Ltd. ("ABB")** is a corporation organized under the laws of Switzerland. ABB's headquarters are located in Zurich. ABB issued and maintains a class of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, which are traded on the New York Stock Exchange. ABB securities are also traded on the Swiss and Swedish stock exchanges. The ABB group of companies are active in many sectors, but its core businesses are focused on electrification, automation, motion and robotics technologies.

3. Respondent was the subject of two prior cases by the Commission. In a case brought by the Commission in 2010 in the United States District Court for the District of Columbia, ABB consented to a Final Judgment for violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA. ABB was ordered to pay over \$23 million in disgorgement and pre-judgment interest and a civil penalty of \$16.51 million. The Commission alleged in its Complaint that ABB, through its subsidiaries, paid bribes to government officials in Mexico to obtain business with government-owned power companies, and paid kickbacks to the former regime in Iraq to obtain contracts under the United Nations Oil for Food Program. In a related criminal proceeding based on those activities, ABB reached a settlement with the U.S. Department of Justice in which it agreed to pay \$19 million in criminal penalties.

4. In a case brought by the Commission in 2004 in the United States District Court for the District of Columbia, ABB consented to a Final Judgment for violations of the anti-bribery, books and records, and internal accounting controls provisions of the FCPA. ABB was ordered to pay nearly \$6 million in disgorgement and pre-judgment interest and a civil penalty of \$10.5 million, which was deemed satisfied by two affiliates' payment of criminal fines of the same amount in a related criminal proceeding. The Commission alleged in its Complaint that, from 1998 through early 2003, ABB's U.S. and foreign-based subsidiaries doing business in Nigeria, Angola and Kazakhstan, offered and made illicit payments totaling over \$1.1 million 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.

government officials in these countries.

Other Relevant Entities and Individuals

5. **ABB South Africa (Pty) Ltd (“ABB-South Africa”)**, based in Longmeadow, South Africa, is ABB’s majority-owned subsidiary, which conducts all sales, marketing, and operational activities for ABB in South Africa. ABB South Africa’s books and records were consolidated into ABB’s for purposes of Commission filings.

6. **ABB AG (“ABB-Germany”)**, based in Mannheim, Germany, is an ABB wholly-owned subsidiary which acts as its operating company in Germany. Its books and records are consolidated into ABB’s for purposes of Commission filings.

7. **ABB S.p.A (“ABB-Italy”)**, based in Milan Italy, is an ABB wholly-owned subsidiary, which acts as its operating company in Italy. Its books and records are consolidated into ABB’s for purposes of Commission filings.

8. **ABB Management Services, Ltd. (“ABB Management Services”)**, based in Zurich, Switzerland, is an ABB wholly-owned subsidiary, the sole purpose of which is to act as the employing entity for certain management-level ABB employees, including Executive A and Executive B.

9. **Eskom Holdings SOC Limited (“Eskom”)** is a South African public utility and the largest producer of electricity in South Africa. It is the largest of South Africa's state-owned enterprises. Eskom operates a number of notable power stations, including the Kusile Power Station in Witbank, South Africa.

10. **Service Provider A** is a privately-owned company located in Johannesburg, Gauteng, South Africa, which provides engineering services.

11. **Service Provider B** is a privately-owned company located in Johannesburg, South Africa, which provides engineering services.

12. **Eskom Official**, a resident and citizen of South Africa, was a government official in South Africa who, from 2014 to 2018, had high decision-making roles at Eskom.

13. **Local Senior Manager**, a resident and citizen of Germany, was a manager at ABB-South Africa who had significant responsibility for the Kusile project for much of the relevant period.

14. **Executive A**, a resident and citizen of Germany, was during the relevant period a senior business executive at ABB headquarters in Switzerland, paid through ABB Management Services.

15. **Executive B**, a resident and citizen of Germany, was during the relevant period a senior sales and marketing executive at ABB headquarters in Switzerland, paid through ABB

Management Services

16. **Capture Team Lead**, a resident and citizen of Germany, was during the relevant period a sales manager at ABB-Germany.

Facts

17. Kusile Power Station (“Kusile”) is a coal-fired power plant operated by Eskom designed to consist of six 800 megawatt coal-fired generating units for a total generating capacity of 4,800 megawatts of electricity. Eskom’s planning for Kusile began in 2007 and is ongoing.

18. During July 2013, Executive A at company headquarters in Switzerland learned of rumors that Eskom was considering replacing the existing contractor in charge of the cabling and installation (“C&I”) work at Kusile and committed “to getting ABB into the race and pole position for the project.” To that end, he assembled a “capture team” responsible for pursuing the tender opportunity consisting primarily of himself, Local Senior Manager, and Executive B, another executive at headquarters in Switzerland.

19. The capture team did not possess confidence in personnel at ABB-South Africa to get access to the people at Eskom that would be making the decisions in regard to the C&I contract. As a result, Executive B, who had experience with obtaining business from Eskom with a previous employer, became directly involved in coordinating the efforts to win the business.

20. Executive B and the capture team spent the rest of 2013 and the early part of 2014 seeking information about the potential tender of the C&I contract from sources inside and outside of Eskom. The capture team eventually confirmed that the Eskom board had, in fact, decided to switch contractors for the C&I work at Kusile and identified Eskom Official as the decision-maker who would determine which company would win the new business. The capture team also learned that ABB’s main competitor was positioned to receive the bulk of the business and believed that the competitor’s advantage was the political connections of various South African business partners with whom it did business.

21. In March 2014, at the suggestion of Executive B that a “sales shark” was needed in pursuing the C&I contract, the capture team appointed Capture Team Lead, “a highly experienced sales expert” with a reputation for non-transparency about how he went about interactions with clients.

22. Capture Team Lead, Executive B and Local Senior Manager set up private meetings and sent clandestine communications with Eskom officials to obtain and share confidential information regarding the Kusile C&I tender, including Eskom’s budget price and ABB’s schedule.

23. In April 2014, the parties entered into a bribery scheme with Eskom whereby ABB-South Africa would use a third party to pay the Eskom Official in exchange for awarding the business to ABB. The scheme was driven by Capture Team Lead and Executive B, with the

knowledge of Local Senior Manager and Executive A. Specifically, in April 2014, Eskom Official introduced Executive B to a friend who was the chair of Service Provider A, a privately-owned South African company that provided engineering services. Executive B and Capture Team Lead agreed to an arrangement with Eskom Official and Service Provider A's chair that ABB-South Africa would be awarded the Kusile C&I contract if ABB-South Africa appointed Service Provider A as a subcontractor for services and prices to be negotiated. The scheme was structured so Eskom Official would receive a portion of Service Provider A's subcontract fee.

24. During negotiations over services and price in October 2014, Service Provider A provided a business proposal. A supply chain manager at ABB-South Africa, who was not aware of the bribery scheme, raised concerns that Service Provider A was unqualified for the work for which it was being considered and that its proposed price was excessive. Given that Executive B and Capture Team Lead were part of the bribe scheme, the concerns went unaddressed by ABB management in South Africa and Switzerland.

25. On March 10, 2015, Eskom awarded the Kusile C&I contract to ABB-South Africa for approximately \$160 million. ABB-South Africa, ABB-Germany, and ABB-Italy entered into an internal consortium agreement which provided for the allocation and execution of work under the C&I contract.

26. On May 13, 2015, ABB-South Africa signed its subcontract with Service Provider A for approximately \$7.2 million which, contrary to internal company policy, was awarded without competitive bidding. The subcontract included a provision for an advanced payment of ten percent, as Eskom Official wanted an upfront payment.

27. Eskom Official demanded the advance payment right away, despite the subcontract's explicit provision that it was not due until the following month. As a result, ABB-South Africa made the advance payment of approximately \$720,000 to Service Provider A immediately, despite knowing it was intended to reach Eskom Official thereby bypassing various internal processes and financial controls.

28. The bribe scheme nearly came undone when Service Provider A's chair refused to share the spoils with the Eskom Official due to an apparent falling out between them. In order to save the illicit arrangement, Capture Team Lead attempted to broker a peace between the two, going so far as arranging a face-to-face meeting, but the efforts were unsuccessful.

29. Needing another way to fund the bribe payments, Capture Team Lead and the Eskom Official agreed to a new scheme whereby bribe payments would be passed through Service Provider B, which was operated by an individual closely connected with a close personal friend of Eskom Official.

30. The scheme was effectuated through the abuse of "variation orders" provided for in the contract between ABB-South Africa and Eskom. These provisions allowed Eskom to make changes to the contract and resulted in ABB-South Africa claiming additional costs from Eskom. Eskom Official and Capture Team Lead agreed upon a target price, which

ABB-South Africa would then quote based on proposals that included inflated, unnecessary, or unjustified costs and Eskom would officially approve. An official at Service Provider B then ensured that money was transmitted to Eskom Official and his family members from the payments.

31. While Service Provider B was to be the new conduit for bribe payments, it failed to pass ABB's Supply Chain Management ("SCM") qualification process. Nevertheless, on January 16, 2016, Eskom verbally instructed ABB-South Africa to provide a proposal for the first variation order, which was to accelerate Unit 1 of the Kusile plant by mobilizing additional resources and on February 1, 2016, ABB-South Africa and Service Provider B signed a letter of intent for Service Provider B to provide the cable pulling and termination works related to the variation order. The next week ABB-South Africa placed purchase orders with Service Provider B of approximately \$1.7 million. Service Provider B immediately began working on site without passing the SCM qualification process and without a contract in place.

32. Because Service Provider B was not qualified under the SCM process, it required a "waiver." Executive A arranged that an American employee at an ABB office in the United States, who specialized in the SCM processes, travel to South Africa to manage the course of obtaining one. During the second week of February 2016, after spending a number of days in South Africa, the American employee was able to secure for Service Provider B a formal waiver premised on its working through two specific sub-subcontractors who were qualified for the job. As Service Provider B's employees were already at the Kusile site working, and the message from ABB-South Africa was that Service Provider B was required to be used by Eskom, the American employee felt he had no choice but to arrange this waiver for Service Provider B.

33. On March 8, 2016, Eskom formally issued the Unit 1 acceleration variation order for approximately \$16.2 million. The variation order made specific reference to the appointment of Service Provider B as an installation subcontractor. Between April 2016 and February 2017, Eskom issued several further variation orders for Service Provider B to perform, increasing the value of its contract with ABB-South Africa by tens of millions of dollars.

34. In early 2016, at the urging of Capture Team Lead, ABB treated Service Provider B as its "preferred service provider" for other projects for the purpose of securing even further Eskom business from Eskom Official. As a result, at the behest of Executive B, ABB South Africa paid Service Provider B additional sums through the end of 2017.

35. In total, from April 2016, through December 2017, ABB-South Africa paid Service Provider B approximately \$37 million.

36. The various payments to Service Provider B, much of which was intended as bribes for Eskom Official, were inaccurately reflected in ABB-South Africa's books and records as legitimate engineering services and involved the use of false purchase orders and contracts. ABB-South Africa's books and records were consolidated into ABB's for purposes of Commission filings.

37. Despite known corruption risks in connection with its South African operations and having been previously the subject of two FCPA settlements with the Commission, ABB failed to devise and maintain sufficient internal financial accounting controls.

Legal Standards and Violations

38. Under Exchange Act Section 21C(a), the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder, and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

39. As a result of the conduct described above, Respondent violated Section 30A of the Exchange Act, which prohibits any issuer with a class of securities registered pursuant to Section 12 of the Exchange Act, or any officer, director, employee, or agent acting on behalf of such issuer, or any stockholder acting on behalf of an issuer, to make use of the mails or any means or instrumentality of interstate commerce in order to obtain or retain business, from corruptly giving or authorizing the giving of anything of value to any foreign official for the purposes of influencing the official or inducing the official to act in violation of his or her lawful duties, or to secure any improper advantage, or to induce a foreign official to use his influence with a foreign governmental instrumentality to influence any act or decision of such government or instrumentality.

40. As a result of the conduct described above, Respondent violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers with a class of securities registered pursuant to Section 12 of the Exchange Act and issuers with reporting obligations pursuant to Section 15(d) of the Exchange Act to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets.

41. As a result of the conduct described above, Respondent violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers with a class of securities registered pursuant to Section 12 of the Exchange Act and issuers with reporting obligations pursuant to Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Disgorgement and Civil Penalties

42. The disgorgement and prejudgment interest referenced in paragraph IV is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the United States Treasury is the most equitable alternative. The disgorgement and prejudgment interest referenced in paragraph IV shall be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Commission Consideration of ABB's Cooperation and Remedial Efforts

43. In determining to accept the Offer, the Commission considered ABB's cooperation and remedial efforts. ABB's cooperation included real-time sharing of facts learned during its own internal investigation, as well as the sharing of documents related to that investigation. ABB has made and continues to make enhancements to its internal accounting controls, global compliance organization and its policies and procedures regarding public tenders; misuse of confidential information; supplier due diligence, monitoring and payments; scrutiny of variation orders; risk review; management visibility and accountability; and reporting and training. Additionally, ABB terminated all employees involved in the misconduct.

Criminal and Foreign Regulatory Dispositions

44. Respondent has entered into a deferred prosecution agreement with the United States Department of Justice that acknowledges responsibility for criminal conduct relating to the findings in the Order.

45. In December 2020, Respondent entered into a civil settlement with the South Africa Special Investigating Unit and others relating to the findings in the Order and paid R1.56 billion (\$107 million) which included reimbursement of the South African government for overpayments on the Kusile project and interest.

Undertakings

46. Respondent undertakes to:
- a. During a three-year period beginning on the date of the entry of this Order, should Respondent discover credible evidence, not already reported to the Commission staff, that questionable or corrupt payments or questionable or corrupt transfers of value may have been offered, promised, paid, or authorized by Respondent, or any entity or person acting on behalf of Respondent, or that related false books and records have been maintained; or that Respondent's internal controls failed to detect and prevent such conduct, Respondent shall promptly report such conduct to the Commission staff.
 - b. During the three-year term, Respondent shall report to the Commission staff the status of its remediation and implementation of compliance measures related to

the effectiveness of its anticorruption policies, procedures, practices, internal accounting controls, recordkeeping, and financial reporting processes. In so doing, Respondent shall (1) conduct an initial review and submit an initial report, (2) conduct a follow-up review and submit a follow-up report, and (3) conduct a final review and submit a final report, as follows:

- (i) **Initial Review and Report:** After consultation with Commission staff, Respondent shall prepare a first written work plan within sixty (60) calendar days of the entry of this Order, and the Commission staff may provide comments within thirty (30) calendar days after receipt of the written work plan. By no later than one year from the entry of this Order, Respondent shall submit to Commission staff a written report (the “Initial Report”) setting forth a complete description and assessment of its anticorruption policies, procedures, practices, internal accounting controls, recordkeeping, and financial reporting processes and whether they are reasonably designed to detect and prevent violations of the FCPA and other applicable securities laws. Respondent may extend the time period for issuance of the Initial Report with prior written approval of Commission staff.
- (ii) **Follow-up Review and Report:** After consultation with Commission staff, Respondent shall prepare a written work plan within forty-five (45) calendar days of the submission of the Initial Report, and Commission staff may provide comments within thirty (30) calendar days after receipt of the written work plan. By no later than one year after the Initial report is submitted to Commission staff, Respondent shall submit to Commission staff a written report (the “Follow-up Report”) incorporating the views of Commission staff on the Initial Report and setting forth a complete description and assessment of its anticorruption policies, procedures, practices, internal accounting controls, recordkeeping, and financial reporting processes and whether they are reasonably designed to detect and prevent violations of the FCPA and other applicable securities laws. Respondent may extend the time period for issuance of the Follow-up Report with prior written approval of Commission staff.
- (iii) **Final Review and Report:** After consultation with Commission staff, Respondent shall prepare a written work plan within forty-five (45) calendar days of the submission of the Follow-up Report, and Commission staff may provide comments within thirty (30) calendar days after receipt of the written work plan. By no later than thirty (30) days before the end of the three-year term, Respondent shall submit to Commission staff a written report (the “Final Report”) incorporating the views of Commission staff on the Follow-up Report and setting forth a complete description and assessment of its anticorruption policies, procedures, practices, internal accounting controls, recordkeeping, and financial reporting processes and whether they are reasonably designed to

detect and prevent violations of the FCPA and other applicable securities laws. Respondent may extend the time period for issuance of the Final Report with prior approval of the Commission staff.

- (iv) Any disputes between Respondent and Commission staff with respect to any written work plan shall be decided by Commission staff in its sole discretion.
 - (v) All written work plans shall identify with reasonable specificity the activities Respondent plans in assessing and monitoring the operation of its FCPA and anticorruption compliance program and whether Respondent's policies and procedures are reasonably designed to detect and prevent violations of the FCPA and other applicable anticorruption laws.
 - (vi) Respondent shall meet with Commission staff within thirty (30) days after providing each report to Commission staff to discuss the report. At least quarterly, and more frequently if Commission staff deems it appropriate in its sole discretion, representatives from Respondent and Commission staff will meet to discuss the status of Respondent's obligations to the review and report obligations under these undertakings, and any suggestions, comments, or improvements Respondent may wish to discuss with or propose to Commission staff.
 - (vii) The reviews and reports submitted by Respondent 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 a 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) is otherwise required by law.
 - (viii) Respondent shall transmit all reports to Tracy L. Price, Deputy Unit Chief, FCPA Unit, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.
- c. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. 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 Tracy L. Price, Deputy Unit Chief, FCPA Unit, 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 to impose the sanctions agreed to in Respondent ABB's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

B. Respondent shall, within 21 days of the entry of this Order, pay disgorgement of \$58,000,000 and prejudgment interest of \$14,554,267 to the Securities and Exchange Commission, which is deemed satisfied by the payment previously made to the Government of South Africa pursuant to the Settlement Agreement of December 11, 2020.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000,000 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). 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 ABB as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Tracy L. Price, Deputy Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5631.

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 acknowledges that the Commission is not imposing a civil penalty in excess of \$75,000,000 based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

F. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Vanessa A. Countryman
Secretary