

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98626 / September 29, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6446 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21764

In the Matter of

**William Blair & Company,
L.L.C., and
William Blair Investment
Management, LLC,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934 AND SECTIONS 203(e) AND 203(k)
OF THE INVESTMENT ADVISERS ACT OF
1940, 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 William Blair & Company, L.L.C. (“William Blair”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against William Blair and William Blair Investment Management, LLC (“WBIM”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) that the Commission has determined to accept. Respondents admit the facts set forth in Section III below, acknowledge that their conduct violated the federal securities laws, admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent 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 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, 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 Respondents' Offers, the Commission finds¹ that

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers and registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failure of William Blair and WBIM employees throughout William Blair and WBIM, including at senior levels, to adhere to certain of these essential requirements and William Blair's and WBIM's own policies. Using their personal devices, these employees communicated both internally and externally by personal text messages ("off-channel communications").

3. From at least January 1, 2019 through the present, William Blair employees sent and received off-channel communications that related to the business of the broker-dealer and registered investment adviser, and WBIM employees sent and received off-channel communications that related to the business of the registered investment adviser including, with respect to the investment advisory business, off-channel communications related to recommendations made or proposed to be made and advice given or proposed to be given. Respondents did not maintain or preserve the substantial majority of these written communications. Respondents' failures included senior personnel at both William Blair and WBIM. As a result, William Blair violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) and William Blair and WBIM violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Respondents' supervisors, who were responsible for supervising junior employees, routinely communicated off-channel using their personal devices. In fact, senior executives, managing directors, and senior supervisors responsible for supervising junior employees themselves failed to comply with Respondents' policies by communicating using non-William Blair or WBIM approved methods on their personal devices about William Blair's broker-dealer and William Blair's or WBIM's investment adviser businesses.

5. William Blair's and WBIM's widespread failure to implement their policies and procedures that prohibit such communications led to their failures to reasonably supervise their employees within the meaning of Section 15(b)(4)(E) of the Exchange Act, with respect to William Blair, and Section 203(e)(6) of the Advisers Act, with respect to William Blair and WBIM.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. During the time period that William Blair and WBIM failed to maintain and preserve off-channel communications, their employees sent and received communications related to William Blair's broker-dealer and William Blair's and WBIM's investment adviser businesses.

7. During this same period, William Blair received and responded to Commission subpoenas for documents and records requests in several Commission investigations. As a result, William Blair's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

8. Commission staff uncovered Respondents' misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. William Blair and WBIM have initiated a review of their recordkeeping failures and begun a program of remediation. As set forth in the Undertakings below, William Blair and WBIM will retain an independent compliance consultant to review and assess William Blair's and WBIM's remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondents

9. William Blair is a Delaware limited liability company with its principal office in Chicago, Illinois, and is registered with the Commission as a broker-dealer and investment adviser.

10. WBIM is a Delaware limited liability company with its principal office in Chicago, Illinois, and is registered with the Commission as an investment adviser.

Recordkeeping Requirements under the Exchange Act and Advisers Act

11. Section 17(a)(1) of the Exchange Act and Section 204 of the Advisers Act authorize the Commission to issue rules requiring, respectively, broker-dealers and investment advisers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act and the Advisers Act.

12. The Commission adopted Rule 17a-4 under the Exchange Act and Rule 204-2 under the Advisers Act pursuant to this authority. These rules specify the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by broker-dealers, or investment advisers, must be maintained and produced promptly to Commission representatives. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve in an easily accessible place originals of all communications received and copies of all communications sent relating to William Blair's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

13. The rules adopted under Advisers Act Section 204, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to among other things, any recommendation made or proposed to be made and any advice given or proposed to be given.

14. The Commission previously has stated that these and other recordkeeping requirements “are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.” Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

William Blair’s and WBIM’s Policies and Procedures

15. William Blair and WBIM maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

16. William Blair’s and WBIM’s employees were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should preserve any personal email, chats or text messages sent or received for business purposes, by forwarding work-related communications to William Blair’s or WBIM’s compliance functions.

17. Messages sent through William Blair’s and WBIM’s approved communications methods were monitored, subject to review, and, when appropriate, archived. Absent steps taken by individual personnel to preserve work-related communication or messages sent on personal devices, were not monitored, subject to review or archived.

18. William Blair’s and WBIM’s policies were designed to address supervisors’ supervision of employees’ training in William Blair’s and WBIM’s communications policies and adherence to William Blair’s and WBIM’s respective books and recordkeeping requirements. Supervisory policies notified employees that electronic communications were subject to surveillance by William Blair or WBIM.

19. William Blair and WBIM, however, failed to implement a system of follow-up and review to determine that supervisors were reasonably following William Blair’s or WBIM’s policies. While permitting employees to use approved communications methods, including on personal phones, for business communications, William Blair and WBIM failed to implement sufficient monitoring to assure that their recordkeeping and communications policies were being followed.

Respondents' Recordkeeping Failures Across Their Brokerage and Investment Advisory Businesses

20. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. William Blair and WBIM cooperated with the investigation by voluntarily gathering and reviewing communications from the personal devices of a sampling of senior personnel. These personnel included senior leadership, including individuals in investment banking, equities, private wealth management, and investment management.

21. The Commission staff's investigation uncovered pervasive off-channel communications at all seniority levels of William Blair's broker-dealer and investment adviser and WBIM's investment adviser. The staff requested off-channel communications data from a sampling of broker-dealer and investment adviser personnel and found that all of the individuals had engaged in at least some level of off-channel communications. Overall, these personnel sent and received numerous off-channel communications, involving other William Blair or WBIM more junior personnel, William Blair's broker-dealer customers and William Blair's and WBIM's investment advisory clients, and other participants in the securities industry. Within William Blair and WBIM, significant numbers of senior leadership participated in off-channel communications.

22. From at least January 2019 through the present, William Blair personnel sent and received off-channel messages that concerned the broker-dealer and, separately, investment advice provided to clients. Additionally, during this period, WBIM personnel sent and received off-channel messages that related to, among other things, providing and recommending investment advice to clients.

23. For example, from December 2021 through December 2022, a Partner in William Blair's investment banking group exchanged numerous off-channel business-related messages with several William Blair colleagues and personnel at other financial services firms and market participants. Within William Blair, this senior member of William Blair's investment banking group exchanged off-channel business communications with other Partners and more junior employees.

24. In another example, from December 2021 through December 2022, a Partner in William Blair's private wealth management group exchanged numerous off-channel business-related messages with several William Blair colleagues and personnel at other financial services firms relating to, among other things, investment advice provided to clients.

25. In a final example, from December 2021 through December 2022, a WBIM Partner exchanged numerous off-channel business-related messages with several WBIM colleagues and personnel at other financial services firms and market participants, and certain communications related to, among other things, investment advice provided to clients.

**William Blair’s Failure to Preserve Required Records Potentially
Compromised and Delayed Commission Matters**

26. From January 2019 through the present, William Blair received and responded to Commission subpoenas for documents and records requests in several Commission investigations. By failing to maintain and preserve required records relating to its broker-dealer and investment adviser business, William Blair likely deprived the Commission of off-channel communications in various investigations.

William Blair’s and WBIM’s Violations and Failure to Supervise

27. As a result of the conduct described above, from at least January 2019 through the date of this Order, William Blair willfully² violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, which require broker-dealers to preserve for at least three years originals of all communications received and copies of all communications sent relating to its business as such.

28. As a result of the conduct described above, William Blair and WBIM willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, which require investment advisers to preserve in an easily accessible place originals of all written communications received and copies of all written communications sent relating to, among other things, any recommendation made or proposed to be made and any advice given or proposed to be given.

29. As a result of the conduct described above, William Blair failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

30. As a result of the conduct described above, William Blair and WBIM failed reasonably to supervise their employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

² “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers 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). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

William Blair's and WBIM's Remedial Efforts

31. In determining to accept the Offers, the Commission considered remedial acts undertaken by William Blair and WBIM, in part before the Commission's inquiry, and cooperation afforded the Commission staff.

Undertakings

32. Prior to this action, William Blair and WBIM enhanced their policies and procedures; increased training concerning the use of approved communications methods, including on personal devices; and began implementing changes to the technology available to employees. In addition, William Blair and WBIM have undertaken to:

Independent Compliance Consultant.

a. William Blair and WBIM shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by William Blair and WBIM.

b. William Blair and WBIM will oversee the work of the Compliance Consultant.

c. William Blair and WBIM shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. William Blair and WBIM shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant's conduct:

i. A comprehensive review of William Blair's and WBIM's supervisory, compliance, and other policies and procedures designed to ensure that William Blair's and WBIM's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

ii. A comprehensive review of training conducted by William Blair and WBIM to ensure William Blair's and WBIM's personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that William Blair's and WBIM's personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

iii. An assessment of the surveillance program measures implemented by William Blair and WBIM to ensure compliance, on an ongoing basis, with the

requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

iv. An assessment of the technological solutions that William Blair and WBIM have begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that William Blair's and WBIM's personnel will use the technological solutions going forward and a review of the measures employed by William Blair and WBIM to track employee usage of new technological solutions.

v. An assessment of the measures used by Respondents to prevent the use of unauthorized communications methods for business communications by employees. This assessment should include, but not be limited to, a review of William Blair's and WBIM's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (e.g., trading floor restrictions).

vi. A review of William Blair's and WBIM's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into William Blair's and WBIM's overall communications surveillance program.

vii. A comprehensive review of the framework adopted by William Blair and WBIM to address instances of non-compliance by William Blair's and WBIM's employees with William Blair's and WBIM's policies and procedures concerning the use of Personal Devices to communicate about William Blair and WBIM business in the past. This review shall include a survey of how William Blair and WBIM determined which employees failed to comply with William Blair's and WBIM's policies and procedures, the corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. William Blair and WBIM shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to William Blair and WBIM and to the Commission staff (the "Report"). William Blair and WBIM shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to William Blair's and WBIM's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to William Blair's and WBIM's policies and procedures.

e. William Blair and WBIM shall adopt all recommendations contained in their Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of the Report, Respondents shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that William Blair or WBIM consider to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that William Blair or WBIM consider unduly burdensome, impractical, or inappropriate, William Blair or WBIM need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning William Blair's or WBIM's policies or procedures on which William Blair or WBIM and the Compliance Consultant do not agree, William Blair or WBIM and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by William Blair and WBIM and the Compliance Consultant, William Blair and WBIM shall require that the Compliance Consultant inform William Blair and WBIM and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that William Blair or WBIM considers to be unduly burdensome, impractical, or inappropriate. William Blair and WBIM shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between William Blair and WBIM and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, William Blair and WBIM shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. William Blair and WBIM shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of William Blair's and WBIM's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. William Blair and WBIM shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. William Blair and WBIM shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, William Blair and WBIM shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former

affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The Report submitted by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report 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) is otherwise required by law.

33. One-Year Evaluation. William Blair and WBIM shall require the Compliance Consultant to assess William Blair's and WBIM's programs for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the report required by Paragraph 30.d above. William Blair and WBIM shall require this review to evaluate William Blair's and WBIM's progress in the areas described in Paragraph 32.c.i-vii above. After this review, William Blair and WBIM shall require the Compliance Consultant to submit a report (the "One Year Report") to William Blair and WBIM and the Commission staff and shall ensure that the One Year Report includes an updated assessment of William Blair's and WBIM's policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

34. Reporting Discipline Imposed. For two years following the entry of this Order, William Blair and WBIM shall notify the Commission staff as follows upon the imposition of any discipline imposed by William Blair or WBIM, including, but not limited to, written warnings, loss of any pay, bonus, or incentive compensation, or the termination of employment, with respect to any employee found to have violated William Blair's or WBIM's policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices: at least 48 hours before the filing of a Form U-5, or within ten (10) days of the imposition of other discipline.

35. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, William Blair and WBIM will also have its Internal Audit function conduct a separate audit(s) to assess William Blair's and WBIM's progress in the areas described in Paragraph 32.c.i-vii above. After completion of this audit(s), William Blair and WBIM shall ensure that Internal Audit submits a report to William Blair and WBIM and to the Commission staff.

36. Recordkeeping. William Blair shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings. WBIM shall preserve any record of compliance with these undertakings in an easily accessible place for a period of not less than five

(5) years from the end of the fiscal year during which the entry was made on such record, the first two (2) years in an appropriate office of WBIM.

37. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

38. Certification. William Blair and WBIM shall certify, in writing, compliance with the undertakings set forth above. The certifications 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 William Blair and WBIM agree to provide such evidence. The certifications and supporting material shall be submitted to Amy S. Cotter, Assistant Director, Division of Enforcement, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604, or such other person as the Commission staff may request, 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 and in the public interest to impose the sanctions agreed to in William Blair's and WBIM's Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act as to William Blair and Sections 203(e) and 203(k) of the Advisers Act as to William Blair and WBIM, it is hereby ORDERED that:

- A. William Blair cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.
- B. William Blair and WBIM cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.
- C. Respondents are censured.
- D. Respondents shall comply with the undertakings enumerated in paragraphs 32 to 38 above.
- E. Respondents shall, within 14 days of the entry of this Order, pay, jointly and severally, a civil money penalty in the amount of \$10,000,000 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 William Blair and WBIM as Respondents 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 Amy S. Cotter, Assistant Director, Division of Enforcement, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

F. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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