

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98632 / September 29, 2023

INVESTMENT ADVISERS ACT OF 1940
Release No. 6449 / September 29, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21769

In the Matter of

**Perella Weinberg Partners LP;
Tudor, Pickering, Holt & Co.
Securities LLC; and Perella
Weinberg Partners Capital
Management LP,**

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 Perella Weinberg Partners LP (“PWP”) and Tudor, Pickering, Holt & Co. Securities LLC (“TPH”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Perella Weinberg Partners Capital Management LP (“PWPCM”) (collectively, “Respondents” or “Perella”).

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. These proceedings arise out of Perella's identification—and self-report—of widespread and longstanding failures of certain Perella employees throughout the firms, including at senior levels, to adhere to certain of these essential requirements and Perella's own policies. Using their personal devices, these employees communicated both internally and externally by personal text messages or WhatsApp ("off-channel communications").

2. After Perella's compliance staff identified business-related electronic communications on non-approved platforms, Perella conducted an internal investigation and self-reported the facts to Commission staff. Respondents proactively identified key documents and facts, which assisted the Commission staff in efficiently investigating the conduct. Prior to contacting the Division of Enforcement, Respondents also undertook significant remedial measures relating to their recordkeeping obligations; enhanced surveillance capabilities; and issued personal devices to certain staff on which only firm-approved platforms are available.

3. From January 2018, PWP and TPH employees sent and received off-channel communications that related to the businesses of these broker-dealers and PWPCM employees sent and received 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' failure was firm-wide, and involved employees at various levels of authority. As a result, PWP and TPH violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder and PWPCM violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Perella's supervisors, who were responsible for supervising junior employees, communicated off-channel using their personal devices. In fact, senior management, partners, and managing directors across each firm, including those responsible for supervising junior employees, failed to comply with Perella policies by communicating using non-firm approved methods on their personal devices about Perella's broker-dealer and/or investment adviser businesses, as applicable.

5. Perella's widespread failure to implement its policies and procedures that prohibit such communications led to its failure to reasonably supervise its employees within the meaning

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.

of Section 15(b)(4)(E) of the Exchange Act as to PWP and TPH and Section 203(e)(6) of the Advisers Act as to PWPCM.

6. During the time period that Perella failed to maintain and preserve off-channel communications its employees sent and received related to the broker-dealer and investment adviser businesses, PWP and TPH received and responded to Commission subpoenas for documents and records requests in numerous of Commission investigations. As a result, PWP's and TPH'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.

7. After self-reporting its conduct, Perella initiated a review of its recordkeeping failures and further enhanced its program of remediation. As set forth in the Undertakings below, Perella will retain an independent compliance consultant to review and assess Perella's remedial steps relating to its recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondents

8. Perella Weinberg Partners LP is a Delaware limited partnership with its principal office in New York, NY and is registered with the Commission as a broker-dealer.

9. Tudor, Pickering, Holt & Co. Securities, LLC is a Texas limited liability company with its principal office in Houston, Texas, is registered with the Commission as a broker-dealer, and is an affiliate of PWP.

10. Perella Weinberg Partners Capital Management LP is a Delaware limited partnership with its principal office in New York, New York and is registered with the Commission as an investment adviser.

Recordkeeping Requirements under the Exchange Act and the 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.

13. 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 the broker-

dealer'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.

14. 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.

15. 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).

Perella's Policies and Procedures

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

17. Perella employees were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes, or forward work-related communications to unapproved software applications on their personal devices.

18. Messages sent through Perella-approved communications methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as text messaging and WhatsApp, were not monitored, subject to review, or archived.

19. Perella's policies were designed to address supervisors' supervision of employees' training in Perella's communications policies and adherence to Perella's books and recordkeeping requirements. Supervisory policies notified employees that electronic communications were subject to surveillance by Perella. Perella had procedures for all employees, including supervisors, requiring annual and quarterly self-attestations of compliance.

20. Perella, however, failed adequately to implement a system of follow-up and review to determine that supervisors were reasonably following Perella's policies. While permitting employees to use approved communications methods, including on personal phones, for business communications, Perella failed to implement sufficient monitoring to assure that its recordkeeping and communications policies were being followed.

Perella's Recordkeeping Failures Across Its Brokerage and Investment Advisory Businesses

21. 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. In June 2023, Perella voluntarily contacted the staff regarding certain off-channel communications that it had identified related to the businesses of PWP, TPH, and PWPCM. Perella cooperated with the staff's investigation by proactively gathering communications from the personal devices of its personnel and responding to the staff's requests for additional information. As reported to the Commission staff, Perella personnel who had engaged in the use of off-channel communications, included senior management, partners, and managing directors across each firm.

22. Perella alerted the Commission staff to pervasive off-channel communications at various seniority levels of PWP and TPH. PWP and TPH collected data from a sampling of broker-dealer personnel and found that all of the broker-dealer personnel sampled had engaged in at least some level of off-channel communications. Overall, these personnel sent and received numerous off-channel communications, involving other Perella personnel, PWP's and TPH's broker-dealer customers, and other participants in the securities industry. As disclosed to the Commission staff, within Perella, a number of senior management, partners, and managing directors across each firm participated in off-channel communications.

23. From at least January 1, 2018, PWP and TPH personnel sent and received off-channel messages that concerned the broker-dealer businesses.

24. For example, a member of PWP and TPH senior management had off-channel communications with numerous other Perella employees, including employees he supervised, and numerous Perella customers.

25. Similarly, a PWP partner communicated by text message with approximately one dozen other Perella employees, including employees he supervised, and several dozen PWP customers.

26. In addition, a PWP managing director exchanged text messages in group chats with other Perella employees, including some he supervised. He also texted numerous firm customers and several dozen employees of other broker-dealers.

27. Perella also gathered messages sent or received from PWPCM investment adviser personnel. The firm found that from at least January 1, 2018, PWPCM had engaged in off-channel communications.

28. For example, in one exchange between PWPCM employees, the employees discussed recent performance of certain accounts and a recommendation they intended to provide to an advisory client.

**Respondents' Failure to Preserve Required Records Potentially
Compromised and Delayed Commission Matters**

29. Between January 2018 and August 2023, PWP and TPH received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. By failing to maintain and preserve required records relating to its broker-dealer and investment adviser businesses, PWP and TPH likely deprived the Commission of these off-channel communications in various investigations.

Respondents' Violations and Failure to Supervise

30. As a result of the conduct described above, from at least January 2018 through the date of this Order, PWP and TPH 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.

31. As a result of the conduct described above, from at least January 2018 through the date of this Order, PWPCM 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.

32. As a result of the conduct described above, PWP and TPH failed reasonably to supervise their employees with a view to preventing or detecting certain of their 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.

33. As a result of the conduct described above, PWPCM failed reasonably to supervise its 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.

Perella's Remedial and Cooperation Efforts

34. In determining to accept the Offers, the Commission considered Perella's self-report, cooperation afforded to Commission staff, and remediation. After identifying off-channel communications, Respondents conducted an internal investigation and self-reported the facts to Commission staff. Prior to approaching Commission staff, in August 2019, Perella had begun a program of remediation, which included issuing firm-issued devices to all employees; strengthening its self-policing procedures by making investments in new technologies to improve

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)).

surveillance efforts; and conducting trainings and sending firm-wide reminders that emphasized the importance of complying with recordkeeping obligations. Perella also took proactive steps to onboard and preserve off-channel communications.

Undertakings

35. Prior to this action, Perella enhanced its policies and procedures, and increased training concerning the use of approved communications methods, including on personal devices. In addition, Respondents have undertaken to:

36. Independent Compliance Consultant.

a. PWP, TPH, and PWPCM shall each 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 Perella.

b. Perella will oversee the work of the Compliance Consultant.

c. Perella 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. Perella shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of Perella’s supervisory, compliance, and other policies and procedures designed to ensure that Perella’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 Perella to ensure 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 Perella 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 Perella 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 Perella has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Perella personnel will use the

technological solutions going forward and a review of the measures employed by Perella to track employee usage of new technological solutions.

v. An assessment of the measures used by Perella 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 Perella'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 Perella's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Perella's overall communications surveillance program.

vii. A comprehensive review of the framework adopted by Perella to address instances of non-compliance by Perella employees with Perella's policies and procedures concerning the use of Personal Devices to communicate about Perella business in the past. This review shall include a survey of how Perella determined which employees failed to comply with Perella 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. Perella 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 each of PWP, TPH, and PWPCM and to the Commission staff (the "Report"). Perella 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 Perella's respective policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to such policies and procedures.

e. Perella shall adopt all recommendations contained in the Report within ninety (90) days of the date of each Report; provided, however, that within forty-five (45) days after the date of such Report, Perella shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Perella considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Perella considers unduly burdensome, impractical, or inappropriate, Perella 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 Perella's policies or procedures on which Perella and the Compliance Consultant do not agree, Perella 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 Perella and the Compliance Consultant, Perella shall require that the Compliance Consultant inform Perella and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Perella considers to be unduly burdensome, impractical, or inappropriate. Perella shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Perella and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Perella shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

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

h. Perella 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. Perella 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, Perella 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 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) as otherwise required by law.

37. One-Year Evaluation. PWP, TPH, and PWPCM shall each require the Compliance Consultant to assess Perella's respective 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 36.d

above. Perella shall require this review to evaluate Perella's progress in the areas described in Paragraph 36.c.i-vii above. After this review, Perella shall require the Compliance Consultant to submit a report (the "One Year Report") to each of PWP, TPH, and PWPCM and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Perella's respective 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.

38. Reporting Discipline Imposed. For two years following the entry of this Order, Perella shall notify the Commission staff as follows upon the imposition of any discipline imposed by Perella, 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 Perella's respective 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.

39. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, PWP, TPH, and PWPCM will each also have their respective Internal Audit function(s) conduct separate audit(s) to assess Perella's respective progress in the areas described in Paragraph 36.c.i-vii above. After completion of this audit(s), Perella shall ensure that Internal Audit submits a report to each of PWP, TPH, and PWPCM and to the Commission staff.

40. Recordkeeping. PWP and TPH shall each 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. PWPCM 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 PWPCM.

41. 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.

42. Certification. PWP, TPH, and PWPCM shall each 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Alison R. Levine, Assistant Regional Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY, 10004-2616, 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 Respondents' Offers.

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

- A. PWP and TPH 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. PWPCM 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 35 to 42 above.
- E. Respondents, jointly and severally, shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000 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 Perella Weinberg Partners LP, Tudor, Pickering, Holt & Co. Securities LLC, and Perella Weinberg Partners Capital Management LP as the 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 Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, New York 10004-2616.

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