

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8884 / January 25, 2008

SECURITIES EXCHANGE ACT OF 1934

Release No. 57206 / January 25, 2008

INVESTMENT ADVISERS ACT OF 1940

Release No. 2698 / January 25, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28136 / January 25, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-12936

In the Matter of

Heartland Advisors, Inc., William J. Nasgovitz, Paul T. Beste, Thomas J. Conlin, Greg D. Winston, Kevin D. Clark, Kenneth J. Della, and Hugh F. Denison,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND CEASE-AND-DESIST ORDERS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 15(b)(4), 15(b)(6) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940

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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b)(4), 15(b)(6) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Heartland Advisors, Inc. (“Heartland Advisors”), William J. Nasgovitz (“Nasgovitz”), Paul T. Beste (“Beste”), Thomas J. Conlin (“Conlin”), Greg D. Winston (“Winston”), Kevin D. Clark (“Clark”), Kenneth J. Della (“Della”), and Hugh F. Denison (“Denison”) (also referred to collectively as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders Pursuant to Section 8A of the Securities Act, Sections 15(b)(4), 15(b)(6) and 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

A. Respondents

1. **Heartland Advisors** was founded in 1982 and maintains its principal place of business in Milwaukee, Wisconsin. During the events relevant to this proceeding, Heartland Advisors was registered with the Commission as an investment adviser and broker-dealer. Heartland Advisors managed the mutual fund portfolio series of Heartland Group, Inc. (“Heartland Group”), a registered investment company, subject to the authority of, and supervision by, Heartland Group’s Board of Directors, and served as the principal underwriter of Heartland Group’s securities. Heartland Advisors managed Heartland Group’s High-Yield Municipal Bond Fund and Heartland Group’s Short Duration High-Yield Municipal Fund (collectively, the “Funds”) until the Commission obtained an order placing the Funds into receivership in March 2001.²

2. **Nasgovitz**, of Milwaukee, Wisconsin, is the President, Chief Executive Officer and Chief Investment Officer of Heartland Advisors, and the President and a Director of Heartland Group. Nasgovitz is the majority owner of the holding company that owns Heartland Advisors.

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.

² On March 21, 2001, Heartland Group consented, without admitting or denying the allegations in the Complaint, to the entry of an order of permanent injunction and other equitable relief for violations of Sections 30(b)(2), 30(e) and 30(g) of the Investment Company Act and Rules 30b2-1, 30d-1(a) and 30d-1(c) promulgated thereunder, which froze the assets of the Funds. In addition, a receiver was appointed over the Funds. See SEC v. Heartland Group, Inc., Case No. 01 C 1984 (N.D. Ill.), Litigation Release No. 16938 (March 22, 2001). The receiver subsequently liquidated the Funds.

3. **Beste**, of Brookfield, Wisconsin, is the Chief Operating Officer of Heartland Advisors and a Vice President of Heartland Group. He also is a member of Heartland Advisors' Pricing Committee.

4. **Conlin**, of Wauwatosa, Wisconsin, was a co-portfolio manager of the Funds until September 2000. He was also, until September 2000, a Vice President of Heartland Advisors and a non-voting member of Heartland Advisors' Pricing Committee. Conlin is no longer employed by Heartland Advisors.

5. **Winston**, of Sussex, Wisconsin, was, during the events relevant to this proceeding, a co-portfolio manager of the Funds. He was a Vice President of Heartland Advisors and an alternate member of its Pricing Committee. Winston is no longer employed by Heartland Advisors.

6. **Clark**, of Menomonee Falls, Wisconsin, is the Senior Vice President of Trading at Heartland Advisors. He also is a member of Heartland Advisors' Pricing Committee.

7. **Della**, of Waukesha, Wisconsin, was, during the events relevant to this proceeding, a Senior Vice President and Treasurer of Heartland Advisors. He also was a member of Heartland Advisors' Pricing Committee. Della is no longer employed by Heartland Advisors.

8. **Denison**, of Whitefish Bay, Wisconsin, was a non-independent Director of Heartland Group, from 1988 to 2003.

B. Other Relevant Entities

1. **Heartland Group** is a Maryland corporation formed in 1986 that maintains its principal place of business in Milwaukee, Wisconsin. Heartland Group has been registered with the Commission as an open-end, management investment company since January 1987. During the period relevant to these proceedings, Heartland Group offered seven different series of mutual funds, including three equity and four fixed-income funds.

2. **Heartland Group's Short Duration High-Yield Municipal Fund** ("Short Duration Fund") began operating on January 2, 1997. Its stated investment objective was a high level of federally tax-exempt current income with a low degree of share price fluctuation.

3. **Heartland Group's High-Yield Municipal Bond Fund** ("High Yield Fund") also began operating on January 2, 1997. Its stated investment objective was to maximize after-tax total return by investing for a high level of federally tax-exempt current income.³

³ Heartland Group's former Independent Directors previously settled a Commission administrative proceeding arising from the events relevant to this proceeding. See In the Matter of Jon D. Hammes, Albert Gary Shilling, Allan H. Stefl, and Linda F. Stephenson, Administrative Proceeding File No. 3-11351 (December 11, 2003).

C. Overview

1. This matter stems from Heartland Advisors' mispricing of certain bonds owned by the Funds and its failure to effectively communicate to the Heartland Group's Board of Directors ("Directors"), and to investors, important facts concerning Heartland Advisors' efforts to evaluate bond issuers.

2. From March 1, 2000 into October 2000, the Funds' portfolios included several municipal bonds that were valued by the Funds at prices above their fair values. As a result, on numerous days throughout that time period, the Funds' Net Asset Values ("NAVs") were incorrect, the Funds' shares were incorrectly priced, and investors purchased and redeemed Fund shares at prices that benefited redeeming investors at the expense of remaining and new investors.

3. During the relevant period, information was presented to the Directors which should have alerted the Directors, including Denison, that the bonds were becoming increasingly illiquid and may have been mispriced. As a result, the Directors, including Denison, should have known that the prices at which the Funds carried their bonds did not reflect the bonds' "fair value" as required by Heartland Group's pricing procedures.

4. Heartland Advisors was forced on October 13, 2000 to devalue the bonds, thereby resulting in approximately \$60 million in monetary losses to shareholders.

D. Background

1. The Funds invested primarily in non-rated, medium and lower quality municipal bonds. The majority of the municipal bonds owned by the Funds were below investment grade and illiquid. Market quotations were not readily available for most of the bonds owned by the Funds.

2. Open-end investment companies, such as the Funds, offer their own securities to investors on a redeemable basis. (Section 5(a) of the Investment Company Act [15 U.S.C. § 80a-5(a)].) Each of the Funds was required to calculate its net asset value ("NAV") daily. (Investment Company Act Rule 22c-1(b) [17 C.F.R. § 270.22c-1(b)].) The price at which an investor can buy or redeem shares of a mutual fund is based on that fund's NAV. (Investment Company Act Rule 22c-1(a) [17 C.F.R. § 270.22c-1(a)].)

3. During 2000, persons residing throughout the United States purchased and redeemed shares of each of the Funds. During 2000, Heartland Advisors publicly disseminated the NAV of each of the Funds in interstate commerce every business day. Persons who purchased and redeemed shares of the Funds effected such transactions at prices based on the NAVs publicly disseminated by Heartland Advisors.

4. A mutual fund generally must value any security for which market quotations are not readily available at "fair value as determined in good faith by the board of directors[.]" (Investment Company Act, Section 2(a)(41)(b) [15 U.S.C. § 80a-2(a)(41)]; Investment Company Act Rule 22c-1(a) [17 C.F.R. § 270.22c-1(a)].) The fair value of a portfolio security generally is the price that a fund might reasonably expect to receive for the security upon its current sale.

(Accounting Series Release No. 118, December 23, 1970 (“ASR 118”).) The Directors considered fair value as the price that could be obtained from an arm’s length buyer in a current sale.

5. The Directors delegated the day-to-day responsibility for operating the Funds to Heartland Advisors. Heartland Advisors made many decisions affecting the Funds’ conduct through three committees, including the Pricing Committee.

6. Heartland Advisors’ Pricing Committee was charged with the responsibility for the day-to-day valuation of the Funds’ portfolio securities pursuant to Heartland Group’s procedures for valuing those securities, and the implementation and administration of the Directors’ procedures for valuing such securities.

7. The pricing procedures established by the Directors directed the Pricing Committee to use valuations provided by FT Interactive Data Corporation, f/k/a Interactive Data Corporation and Muller Data Corporation (“FT”), a pricing service, to fair value such securities in order to determine the Funds’ daily NAVs. Heartland Group’s pricing procedures required the Pricing Committee to review the evaluations provided by FT to ensure that those evaluations were “sufficiently timely and accurate.”⁴

8. During 2000, Heartland Advisors created and preserved accounting records reflecting its calculations of the daily NAVs of the Funds.

9. During late 1999 and early 2000, the Funds’ portfolio managers learned that projects underlying several bonds held by the Funds had gone into default and other projects were failing. FT did not reduce its valuations of the affected bonds based upon that information, while Heartland Advisors did not consider fully the implications of these events for the valuations of the affected bonds, but continued to use the FT valuations.

10. Between March 2000 and May 2000, FT gradually lowered the valuations of certain bonds held by the Funds. For example, between March 7, 2000 and May 8, 2000, the valuations of certain bonds owned by the Funds uniformly decreased on a daily basis. The valuations of these bonds in March ranged from approximately 87 percent of par value to 98 percent of par value. From March into May, the valuations of those bonds were reduced daily in increments of 0.5 percentage points until the valuations reached 80 percent of par value. These incremental price reductions were not based on any contemporaneous market or credit-related events, or other external factors affecting the individual securities. Between March 2000 and May 2000 Heartland Advisors continued to use FT’s valuations.

11. The effect of these incremental price reductions was to spread out and thereby minimize the impact of the total valuation declines on the Funds’ NAVs and on the performance reported by the Funds.

⁴ FT previously settled a Commission administrative proceeding arising from the events relevant to this proceeding. See In the Matter of FT Interactive Data, Administrative Proceeding File No. 3-11352 (December 11, 2003).

12. The Funds' May 1, 2000, Statement of Additional Information ("SAI"), which was incorporated by reference in the Funds' May 1, 2000 prospectus, as supplemented as of June 9, 2000, represented that both Heartland Advisors and the Directors would, among other things, monitor the issuers of the high yield bonds held in the Funds' portfolios to assess and determine whether the issuers had sufficient cash flow to meet required principal and interest payments and to assure the continued liquidity of such bonds. Heartland Advisors and the Directors did not, however, adequately monitor the financial status of the bonds' issuers or the bonds' liquidity. Heartland Advisors publicly disseminated the May 1, 2000, SAI, the May 1, 2000, prospectus, and the June 9, 2000, supplement to that prospectus. The June 30, 2000, NAVs of the Funds were publicly disseminated by means of a semi-annual report dated July 1, 2000.

13. The Fund's June 9, 2000, prospectus represented that Heartland Advisors managed the risks associated with the Funds through "intensive credit research," pursuant to Heartland Advisors' proprietary method. In fact, by the late summer 2000, Heartland Advisors' Fixed Income Department was understaffed and performing what a senior manager described as "catch up research" on the Funds' portfolios.

14. Beginning in the Spring of 2000, the Funds were experiencing net redemptions, and the Funds had not been able to purchase any new bonds during the prior six months due to a lack of cash. Respondents failed to sell sufficient bonds held by the Funds to meet redemption requests in part because the Funds' portfolio managers made the determination not to sell bonds at prices below the Funds' valuations. As a result, the Funds borrowed heavily against a line of credit and used the borrowed money to meet redemption requests.

15. By the Spring of 2000, the Funds were also experiencing liquidity problems. For example, on April 27, 2000, almost 18% of the bonds held by the High Yield Fund were illiquid, and 6% of the bonds in the Short Duration Fund were illiquid. The fact that so many bonds held by the Funds were individually illiquid had the compounding effect of causing the portfolios of the Funds to be collectively illiquid, potentially exacerbating the Funds' liquidity problems.

16. At an August 10, 2000, meeting of the Directors, Conlin, one of the Funds' co-portfolio managers, stated that if forced to sell bonds owned by the Funds that day, a discount from current valuation would be required but that Heartland Advisors should be able to sell the bonds owned by the Funds in one week in the ordinary course. The Directors directed Heartland Advisors to sell bonds owned by the Funds to reduce the Funds' borrowings. Heartland Advisors failed to do so.

17. Shortly after the August 10, 2000, Directors meeting, Conlin tendered his resignation.

18. The Funds' liquidity problems continued into September 2000. Through September, Heartland Advisors experienced difficulty in selling bonds at or near the Funds' valuations. During September, several of the Respondents contacted potential purchasers, discussed the Funds' holdings and received expressions of interest at prices significantly below the prices at which the Funds were valuing the bonds. Heartland Advisors believed these potential purchasers were "vulture funds" and other investors who were attempting to purchase the Funds' holdings at prices that Heartland Advisors believed to be unreasonably low.

Although these expressions of interest did not establish valuation, Heartland Advisors should have given greater weight to such expressions in deciding whether to continue to utilize FT's valuations.

19. In late September 2000, Heartland Advisors sold some of the Funds' most illiquid bonds to the State of Wisconsin Investment Board ("SWIB"). The transaction was only completed because Nasgovitz and a company he controlled agreed to guaranty to SWIB that it would recover its investment plus a 20% return. While Heartland Advisors disclosed the details of the SWIB transaction to the Directors, no public disclosure was made.

20. On September 28, 2000, Heartland Advisors reduced the NAV of the High-Yield Fund by 8.2% and the NAV of the Short Duration Fund by 2.1%. As a result, the NAVs of the High Yield Fund and the Short Duration Fund dropped from \$8.75 to \$8.03 and \$9.10 to \$8.91, respectively, in one day.

21. Heartland Advisors issued a press release on September 28, 2000, announcing that two individuals would join Winston as co-portfolio managers of the Funds. The press release also announced Conlin's resignation. The press release said nothing regarding the reduced valuations of the Funds or the liquidity problems of the Funds.

22. On the evening of September 28, 2000, Winston decided to redeem some of his shares in the Funds. He then made a phone call to relatives. On September 29, 2000, Winston and his relatives redeemed a total of 9,530.75 shares of the Funds.

23. On October 10, Della called in a trade to redeem 147.62 shares in the Short Duration Fund and 194.37 shares in the High Yield Fund. Della also called in a trade for an account over which he had discretionary authority and redeemed 1,946.71 shares in another Heartland Group Fund which also owned several of the bonds owned by the Funds.

24. On October 12, the Chairperson of the Pricing Committee directed Heartland Advisors' Fixed Income Department to determine fair value prices of bonds held in the Funds' portfolios. The Fixed Income Department provided alternative valuations, but the Pricing Committee determined that it did not have any basis for concluding that these valuations were more reliable than FT's valuations. Thus the Pricing Committee continued to use FT's evaluations to value the Funds' bonds that day.

25. Later on October 12, one of the Funds' new co-portfolio managers sent an email to the Chairperson of the Pricing Committee stating his belief that the prices used to value the Funds that day did not reflect the value of the bonds held in the Funds.

26. On October 13, 2000, the Pricing Committee proceeded to assign new values to the bonds held by the Funds. Before doing so, the Pricing Committee asked the Fixed Income Department to provide fair values for the portfolio securities and were told that the Fixed Income Department could not provide such valuations. The Fixed Income Department provided alternative valuations which the Pricing Committee chose not to accept. Instead, the Pricing Committee further reduced the individual portfolio security evaluations recommended by the

Fixed Income Department by an additional 33% for the Short Duration Fund and 50% for the High Yield Fund.

27. As a result, on October 13, 2000, the NAV of the High Yield Fund decreased by 69.4%, from \$8.01 to \$2.45, and the NAV of the Short Duration Fund decreased by 44.0%, from \$8.70 to \$4.87 from the previous day.

28. The Directors' review, including Denison's, of Heartland Advisors' devaluation of the Funds' bonds on October 13, 2000 was inadequate because they failed to identify the deficiencies in Heartland Advisors' pricing of the bonds on that day.

29. As a result of the negligent conduct described above, Heartland Advisors did not properly fair value the bonds held by the Funds.

30. As a result of the negligent conduct described above, the NAV of each of the Funds was materially overstated from March 1, 2000 to October 13, 2000. Heartland Advisors publicly disseminated the Funds' materially misstated NAVs.

31. As a result of the negligent conduct described above, Heartland Advisors, the Funds' principal underwriter, effected purchases and redemptions of shares of the Funds at materially incorrect prices.

E. Findings.

1. As a result of the negligent conduct described above, the Commission finds that Respondents (other than Denison) willfully⁵ violated the federal securities laws, as follows:

a. Heartland Advisors, Nasgovitz, Beste, Conlin, Winston, Clark and Della violated Sections 17(a)(2) and 17(a)(3) of the Securities Act;

b. Heartland Advisors, Nasgovitz, Beste, Conlin, Winston and Clark violated Section 34(b) of the Investment Company Act;

c. Heartland Advisors violated Rule 22c-1(a), promulgated pursuant to Section 22(c) of the Investment Company Act; and

⁵ A willful violation of the securities laws means merely "that the person charged with the violation 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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

d. Heartland Advisors violated Section 206(2) of the Advisers Act, and Nasgovitz, Beste, Conlin, Winston, Clark and Della were a cause of Heartland Advisors' violation of Section 206(2) of the Advisers Act.⁶

2. As a result of the negligent conduct described above, the Commission finds that Denison violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and was a cause of Heartland Advisors' violation of Rule 22c-1(a), promulgated pursuant to Section 22(c) of the Investment Company Act.

IV.

In view of the foregoing, the Commission deems it appropriate to accept the Offers submitted by the Respondents and impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b)(4), 15(b)(6) and 21C of the Exchange Act, Sections 203(e), 203(f) and 203(k) of the Advisers Act, and Section 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

1. Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act.

2. Heartland Advisors, Nasgovitz, Beste, Conlin, Winston, and Clark cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act.

3. Heartland Advisors cease and desist from committing or causing any violations and any future violations of Rule 22(c)-1(a) promulgated under the Investment Company Act.

4. Heartland Advisors cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

5. Nasgovitz, Beste, Conlin, Winston, Clark and Della cease and desist from causing any violations and any future violations of Section 206(2) of the Advisers Act.

6. Denison cease and desist from causing any violations and any future violations of Rule 22c-1(a) promulgated pursuant to Section 22(c) of the Investment Company Act.

7. Heartland Advisors, Nasgovitz, Beste, Conlin, Winston, Clark, and Della are censured.

⁶ A violation of Section 206(2) may be established by a showing of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992). Moreover, "cause," as used herein, is based upon negligence, which is "sufficient to establish liability for causing a primary violation that does not require scienter." *Matter of Warwick Cap. Mgmt., Inc., et al.*, Admin. Proc. File No. 3-12357, 2007 WL 505772, at *10 (Feb. 15, 2007) (quoting *KPMG Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), recon. denied, 55 S.E.C. 1 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002)).

8. Winston and Della are suspended from association with any broker, dealer, or investment adviser for a period of 12 months, effective on the second Monday following the entry of this Order.

9. Winston and Della are prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of 12 months, effective on the second Monday following the entry of this Order.

IT IS FURTHER ORDERED that:

A. Heartland Advisors shall, within 30 days of the entry of this Order, and jointly and severally with Nasgovitz, pay disgorgement of \$1 and a civil money penalty in the amount of \$3.5 million;

B. Beste shall, within 30 days of the entry of this Order, pay disgorgement of \$1 and a civil money penalty in the amount of \$95,000;

C. Conlin shall, within 30 days of the entry of this Order, pay disgorgement of \$1 and a civil money penalty in the amount of \$95,000;

D. Winston shall, within 30 days of the entry of this Order, pay disgorgement of \$46,274, prejudgment interest of \$21,687, and a civil money penalty in the amount of \$95,000;

E. Clark shall, within 30 days of the entry of this Order, pay disgorgement of \$1 and a civil money penalty in the amount of \$25,000; and

F. Della shall, within 30 days of the entry of this Order, pay disgorgement of \$2,833, prejudgment interest of \$1,297, and a civil money penalty in the amount of \$25,000.

G. Such payments of disgorgement, interest and penalties referenced in paragraphs A through F above shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies the payor as a Respondent in these proceedings and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John E. Birkenheier, Supervisory Trial Counsel, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL 60604.

H. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraphs A through G above. Regardless of whether any such Fair Fund distribution is made, 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 Respondents shall not, after offset or reduction in any Related Investor

Action based on Respondents' payment of disgorgement in this action, argue that Respondents are entitled to, nor shall Respondents further benefit by offset or reduction of any part of Respondents' payments of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that Respondents 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 United States Treasury or to a Fair Fund, as the Commission directs. 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.

Nancy M. Morris
Secretary