

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30313 / December 20, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15146**

**In the Matter of**

**The New America High Income  
Fund, Inc.; Robert F. Birch;  
and Ellen E. Terry,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 9(b) AND 9(f) OF  
THE INVESTMENT COMPANY 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 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against The New America High Income Fund, Inc., Robert F. Birch, and Ellen E. Terry (collectively “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 Respondents 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 Pursuant to Sections 9(b) and 9(f) of the Investment Company 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 finds<sup>1</sup> that:

#### Summary

These proceedings arise out of actions by a registered closed-end investment company, The New America High Income Fund, Inc. ("New America" or "the Fund"), and its two executives, Robert F. Birch ("Birch") and Ellen E. Terry ("Terry"), concerning New America's preferred stock called Auction Term Preferred Stock ("ATP"). ATP is a type of auction rate security ("ARS").

In January 2008, during the ARS market crisis, New America, acting through Birch and Terry, repurchased \$15 million of its own ATP from an ATP broker-dealer to avoid a failed auction. Although the repurchase also was intended to preserve ATP liquidity, it was inconsistent with the ATP terms and conditions, which prohibited the Fund from submitting an order or otherwise acquiring ATP in an ATP auction. The repurchase also unfairly discriminated against other ATP holders, and was contrary to the Fund's prior statements in shareholder reports that the Fund would redeem or repurchase ATP to the extent necessary to maintain applicable asset coverage requirements. The repurchase was not intended to maintain asset coverage requirements; it was designed to avoid a failed auction.

Also, in September 2008, when the broker-dealer for the majority of New America's ATP became subject to liquidation and resigned as an ATP broker-dealer, New America, acting through Birch and Terry, improperly lowered the dividend rate on the majority of its ATP from the Maximum Applicable Rate to the Minimum Applicable Rate. This reduction in the dividend rate also was inconsistent with the ATP terms and conditions, and resulted in an underpayment of dividends from September 2008 to December 2010 by 70% for a total amount of \$410,594.08.

#### Respondents

1. **The New America High Income Fund, Inc. ("New America" or "the Fund")**, is organized as a Maryland corporation located in Boston, Massachusetts, and is registered with the Commission as a diversified, closed-end management investment company under the Investment Company Act.
2. **Robert F. Birch ("Birch")**, age 76, of Dover, Massachusetts, has been a Director and the President of New America since 1992.
3. **Ellen E. Terry ("Terry")**, age 53, of Reading, Massachusetts, is the Vice President and Treasurer (since 1992), Chief Compliance Officer (since 2004), and Secretary (since 2010) of New America.

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<sup>1</sup> 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.

## **Other Relevant Entities**

4. **Lehman Brothers Inc. (“Lehman”)**, a Delaware corporation with its principal offices in New York, New York, was a broker-dealer registered with the Commission under Section 15(b) of the Securities Exchange Act of 1934. On September 19, 2008, Lehman became subject to liquidation under the Securities Investor Protection Act after Lehman’s parent company, Lehman Brothers Holdings Inc., filed a voluntary petition for bankruptcy on September 15, 2008. Lehman was the exclusive broker-dealer for New America’s ATP Series A, B, and C.

## **Background**

5. New America is a closed-end fund with a leveraged capital structure. The Fund’s investment objective is to provide high current income, while seeking to preserve common stockholders’ capital, through investment in a professionally managed, diversified portfolio of high-yield bonds. The Fund is managed under the direction of the Fund’s Board of Directors and by its two officers, Birch and Terry. Birch, Terry, and another person who handles administrative matters are the Fund’s only employees. The Fund’s bond portfolio is managed by an external investment adviser.

6. The Fund’s capital structure consists of two classes of securities—common and preferred stock. Its common stock is listed on the New York Stock Exchange under the symbol “HYB.” As of January 2008 the Fund had issued and outstanding 5,200 shares of ATP in four Series (A, B, C, and D) for a total value of \$130 million, based on a liquidation value of \$25,000 per share.<sup>2</sup> The four ATP Series were issued under registration statements filed with the Commission and have nearly identical terms and conditions, including auction procedures.

7. ATP allowed the Fund to borrow for the long-term at short-term interest rates. ATP are essentially perpetual preferred stock because they do not have a maturity date. The Fund uses ATP proceeds to invest in high-yield bonds to increase the Fund’s net asset value (“NAV”) and to contribute to common stock dividends. Under the Investment Company Act and in order to maintain Aaa/AAA credit ratings, the Fund must comply with asset coverage requirements obligating the Fund to hold a certain percentage of assets in its bond portfolio in excess of the ATP liquidation value.

8. Like many ARS, each ATP Series may be traded every twenty-eight days through a Dutch auction in which the ATP dividend would be reset. The auctions for New America’s four ATP Series were staggered so that there was one auction for one Series approximately every week. ATP auction dividends typically cleared or reset at or just below the 30-day, AA Composite Commercial Paper Rate (the “Benchmark Rate” which is similar to 1-Month LIBOR).

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<sup>2</sup> Auction rate securities, such as New America’s ATP, are bonds or preferred stock with interest rates or dividend yields that are periodically reset through Dutch auctions, typically held every seven, twenty-eight, or thirty-five days. ARS were usually issued with variable maturity dates from five to thirty years, but can be issued with no maturity date. ATP were often sold to investors by broker-dealers as a “cash management alternative” in light of their short-term dividend periods. General information about ARS is available at <http://www.sec.gov/investor/ars.htm>.

9. For an ATP auction to occur on a scheduled auction date, at least one broker-dealer must gather and submit orders to the auction agent appointed by the Fund. If a scheduled auction was not held for any reason, or if an auction “failed” due to insufficient clearing or buy orders to cover sell orders, the ATP dividend was automatically reset at the “Maximum Applicable Rate” (150% of the Benchmark Rate), until the next auction. If all holders submitted (or were “deemed” to have submitted) hold orders in any auction, the auction was an “all-hold” auction and the ATP dividend was automatically reset at the “Minimum Applicable Rate” (80% of the Benchmark Rate), until the next auction.

10. Under ATP auction procedures set forth in the Fund’s ATP registration statements, the Fund may not submit an order or otherwise acquire ATP in any ATP auction. The Fund’s ATP broker-dealers, however, routinely placed buy orders (“support bids”) in ATP auctions to prevent failed auctions. If an auction had insufficient buy orders, the broker-dealers’ support bids were partially filled, and they purchased ATP for their own accounts or inventory. The broker-dealers also routinely placed sell orders in every auction (for which they held ATP in inventory) to prevent all-hold auctions.

11. The Fund’s ATP registration statements permit the Fund to redeem or repurchase ATP outside of an auction under certain circumstances, such as when the Fund’s assets and NAV are in decline and the Fund needs to reduce leverage. The Fund may redeem or repurchase ATP by (1) a mandatory redemption; (2) an optional redemption; or (3) a repurchase in market or other transactions. Any redemption or repurchase also must comply with Section 23(c) of the Investment Company Act and rules thereunder, which prohibit a closed-end fund from purchasing its own securities except under limited conditions. The Fund’s shareholder reports filed with the Commission from 1996 to 2008 stated that the Fund “intends to effect such redemptions and/or repurchases to the extent necessary to maintain applicable asset coverage requirements.” In the past, the Fund had repurchased ATP when its assets and NAV were declining to decrease leverage and maintain asset coverage requirements.

## **Facts**

### **New America’s Repurchase of ATP to Avoid a Failed Auction**

12. Beginning in August 2007, as the subprime mortgage market crisis spread to the ARS market, demand for ARS plummeted, causing some ARS auctions to fail. The contagion effect of these failures quickly spread to New America’s ATP. Lehman, as the exclusive broker-dealer for New America’s ATP Series A, B, and C, bought increasing amounts of ATP as the buyer of last resort to prevent ATP auctions from failing. By the end of August, Lehman had bought more than \$37 million (of \$105 million) of Series A, B, and C at auctions. By mid-September, Lehman owned more than \$57 million.

13. The ARS market crisis also caused a spike in ATP auction dividend rates. Before August 2007, ATP auction dividends usually had cleared at or just below the Benchmark Rate. But the ARS market crisis caused ATP dividends from August to September 2007 to clear 15-30% higher than the Benchmark Rate. For example, on July 30, 2007, the Series A auction cleared at

5.28% (or just 0.75% below the Benchmark Rate). The next Series A auction on August 27, however, cleared at 6.90% (or 25.39% above the Benchmark Rate).

14. On September 12, 2007, the ATP troubles caused the Fund to issue a press release announcing that “as a result of turmoil in the commercial paper markets and its effect on investor demand, there has been a significant increase in the dividend rates for the four series of the Fund’s [ATP].” The release also warned that “[u]nder current market conditions, there is no assurance that future auctions of the Fund’s ATP will be successful.”

15. From September to December 2007, Lehman continued to place support bids in Series A, B, and C auctions and bought even more ATP even though the ATP market remained troubled. By the end of December, Lehman had bought more than \$84 million (or 80%) of New America’s Series A, B and C, and ATP dividend rates continued to clear well above historic levels and the Benchmark Rate.

16. Late in the week of January 7, 2008, Lehman’s head ARS trader informed Birch and Terry that Lehman—which by then owned more than \$91 million of ATP—would no longer be the buyer of last resort at ATP auctions, and that, unless the Fund repurchased some ATP from Lehman’s inventory, the next ATP auction (of Series A) on Monday, January 14, could fail due to approximately \$15 million (or 600 shares) of expected sell orders from other holders.

17. On or around Friday, January 11, Birch authorized the Fund to repurchase \$15 million of ATP from Lehman after separate discussions with certain Fund directors. Birch authorized this repurchase with the understanding that Lehman would in turn place a support bid in the January 14th auction of Series A and buy whatever amount was necessary to prevent a failed auction. At the time, Birch and Terry believed that even one failed auction could cause all future ATP auctions to fail. A failed auction also would deprive existing ATP shareholders of liquidity, and could prevent the Fund from replacing Lehman with another ATP broker-dealer.

18. Birch and Terry understood that, under the Fund’s ATP registration statements, the Fund could not submit an order or acquire ATP in ATP auctions. Thus, they decided that the Fund should not repurchase any Series A from Lehman, as that Series was scheduled to auction on January 14th. Birch and Terry agreed with the Lehman trader’s suggestion that the Fund repurchase \$15 million of non-Series A-ATP. The Fund repurchased \$15 million of Series C ATP, of which Lehman by then had owned nearly \$42 million out of \$45 million outstanding. The Series A auction on Monday, January 14th was successful, with Lehman placing a support bid and purchasing an additional \$12.5 million into its inventory.

19. By repurchasing \$15 million of Series C as a means to maintain Lehman’s support of the January 14th Series A auction and thereby avoid an auction failure, the Fund indirectly submitted an order or acquired ATP in the Series A auction, which was inconsistent with the ATP terms and conditions. The repurchase also was contrary to the Fund’s disclosures in shareholder reports, which stated that the Fund intended to repurchase ATP “to the extent necessary to maintain asset coverage requirements.” The repurchase from Lehman was not driven by any concern with the asset coverage requirements.

20. Later in January 2008, Birch and Terry negotiated with another broker-dealer to replace Lehman as the Series A, B, and C broker-dealer. This prospective broker-dealer began to purchase most of the ATP from Lehman's inventory, and Lehman continued to place support bids in ATP auctions to prevent auction failures while the Fund and the prospective broker-dealer were negotiating a written broker-dealer agreement. However, on February 13, 2008, before the agreement could be executed, the ARS market collapsed and all ATP auctions began to fail.

21. In New America's 2008 Semi-Annual Report filed with the Commission on Form N-CSRS (Sept. 4, 2008), the Fund reported a change in the number of outstanding ATP shares from 5,200 to 4,600. The report did not explain that the Fund had repurchased 600 shares (\$15 million) of ATP from Lehman in January 2008 to avoid a failed auction. With the assistance of the Fund's counsel, Birch and Terry drafted, signed, and filed the 2008 Semi-Annual Report on Form N-CSRS.

### **New America's Failure to Pay the Correct ATP Dividend After Lehman's Demise**

22. The Fund's ATP auction procedures set forth in ATP registration statements require the ATP dividend to be automatically reset at the Maximum Applicable Rate (1) if sufficient clearing or buy orders do not exist in an auction (*i.e.*, auction failure), or (2) if an auction is not held for any reason. The only applicable exception to this procedure is when all holders submit or are "deemed" to have submitted a hold order for a given auction. In that situation, the resulting auction is an "all-hold" auction with the ATP dividend resetting at the Minimum Applicable Rate. For this exception to apply, however, there must be a duly appointed broker-dealer that can participate in the auction. If no such broker-dealer exists, then the auction cannot be held, and the ATP dividend must be automatically reset at the Maximum Applicable Rate as described above. Also, Lehman's routine practice was to submit a sell order (when it was holding ATP in inventory) in every ATP auction to prevent an all-hold auction, thus preventing the ATP dividend from resetting at the Minimum Applicable Rate.

23. Since February 13, 2008, ATP dividends had been resetting at the Maximum Applicable Rate because of failed auctions as a result of insufficient clearing or buy orders. On September 15, 2008, Lehman's parent holding company filed a voluntary bankruptcy petition. On September 19, 2008, Lehman was subject to liquidation proceedings under the Securities Investor Protection Act. Lehman began to shut down most of its broker-dealer operations, including the ARS trading desk, and laid off thousands of employees. On the same day, a Lehman ARS trader e-mailed the ATP auction agent stating that, due to the liquidation Lehman was resigning as the broker-dealer for all ARS, including New America's ATP Series A, B, and C. Beginning on September 22nd, Series A, B, and C auctions were not held because of Lehman's resignation.

24. Shortly after Lehman's liquidation commenced, an auction agent called Terry to seek her guidance on the appropriate dividend rate for Series A, B, and C. The auction agent was unclear whether the Series A, B, and C auction dividends should continue to reset at the Maximum Applicable Rate, as Lehman was not submitting any orders. Before its liquidation, Lehman had been submitting sell orders in Series A, B, and C auctions to prevent all-hold auctions and the application of the Minimum Applicable Rate. After consulting with Birch and Fund counsel, Terry told the auction agent that, if there was no order submitted on behalf of any ATP holder, the Fund

would deem all holders to have submitted hold orders, resulting in an all-hold auction with dividends resetting at the Minimum Applicable Rate. Following this conversation, the auction agent reset the Series A, B, and C dividends at the Minimum Applicable Rate. As a result, the Fund began to pay dividends to Series A, B, and C holders at the Minimum Applicable Rate in September 2008.

25. Under ATP auction procedures, the Maximum Applicable Rate should have applied for Series A, B, and C dividends when Lehman, the exclusive Series A, B, and C broker-dealer, resigned due to its liquidation. As noted above, the auction procedures require ATP dividends to be automatically reset at the Maximum Applicable Rate in the event an auction is not held for any reason. After Lehman's resignation, Series A, B, and C auctions could not be held because there was no broker-dealer. Without a broker-dealer, the exception permitting the Fund to deem all holders as having submitted hold orders should not have applied. Because Series A, B, and C holders could not submit orders directly to the auction agent, it was not possible to hold auctions after Lehman's resignation, and the dividend rate should have been automatically reset at the Maximum Applicable Rate.

26. The Fund's 2008 Semi-Annual Report filed with the Commission on Form N-CSRS (Sept. 4, 2008) contained the following statement on ATP auction failures beginning in February 2008:

[S]ince February the auctions for most auction rate securities, including the Fund's ATP have failed. As a result of the auction failures, the holders of the Fund's ATP have not been able to sell the ATP. In a failed auction, the ATP dividend is set according to the terms of the ATP prospectus at 150% of the [Benchmark Rate].

27. After the Fund began paying the Minimum Applicable Rate for Series A, B, and C dividends in the wake of Lehman's liquidation in September 2008, the Fund's 2008 Annual Shareholder Report filed on Form N-CSR (Mar. 6, 2009) contained the following revised disclosure:

As a result of the auction failures, holders of the Fund's ATP have not been able to sell their ATP in monthly auctions. Because of these auction failures, the dividend rate for each series of the ATP *has been, and will continue to be so long as the auctions are not successful, automatically set at each auction using a formula* dictated by the terms of the ATP. This formula is based on [the Benchmark Rate] as described in the ATP prospectus. [Emphasis added.]

The 2008 Annual Shareholder Report did not disclose that the Fund had determined that the Minimum Applicable Rate would apply to Series A, B, and C dividends beginning in September 2008, even though auctions for those ATP were not being held. To date, there is no Series A, B, or C broker-dealer, and auctions for those ATP are not being held. With the assistance of the Fund's counsel, Birch and Terry drafted, signed, and filed the Fund's 2008 Annual Shareholder Report.

28. On December 27, 2010, after Commission staff commenced an examination and investigation of matters relating to the Fund's ATP, the Fund announced that the Fund's Board

had authorized the Fund to pay a “Supplemental Dividend” in the amount of \$413,399.57 to Series A, B, and C holders. This Supplemental Dividend is the difference between the Minimum Applicable Rate that was paid and the Maximum Applicable Rate that would have been paid as Series A, B, and C dividends from September 2008 through October 2010, plus interest. The Board also authorized the Fund to pay the Maximum Applicable Rate for Series A, B, and C dividends on scheduled auction dates from October 2010 forward.

### **Violations**

29. As a result of the conduct described above, Respondent New America willfully<sup>3</sup> violated Section 23(c) of the Investment Company Act and Rule 23c-1 thereunder. Section 23(c) states that “[n]o registered closed-end company shall purchase any securities of any class of which it is the issuer except” under limited conditions. Rule 23c-1(a) enumerates eleven such conditions, including the following: “The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased,” and “the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.” Rule 23c-1(a)(9) & (10).

30. New America’s repurchase of ATP in January 2008 from Lehman outside of an auction and at the liquidation value was made in a manner or on a basis which discriminated unfairly against other ATP holders. New America also did not adequately notify ATP holders of its intention to repurchase ATP because it had only informed investors that it would repurchase ATP “to the extent necessary to maintain applicable asset coverage requirements.” The January 2008 repurchase, however, was not made for this purpose, but rather to prevent an auction failure. By authorizing and executing the repurchase for the Fund, Respondents Birch and Terry caused New America’s violations of Section 23(c) and Rule 23c-1.

31. Respondents also willfully violated Section 34(b) of the Investment Company Act, which states: “It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to [the Investment Company Act,]” and “[i]t shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading.”

32. New America’s repurchase of its ATP in January 2008 was inconsistent with the Fund’s ATP terms and conditions, which prohibited the Fund from submitting an order or otherwise acquiring ATP in ATP auctions. New America disclosed in the 2008 Semi-Annual Report filed on Form N-CSRS the reduction in the number of outstanding ATP shares. Because that disclosure did not specify that New America had repurchased ATP from Lehman to avoid a

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<sup>3</sup> A willful violation of the securities laws means merely “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.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).



failed auction, the 2008 Semi-Annual Report was materially misleading at the time of filing. As a result, Respondents violated Section 34(b).

33. New America's payment of the Minimum Applicable Rate for Series A, B, and C dividends from September 2008 to December 2010 was also inconsistent with the ATP terms and conditions, which prescribed that the Maximum Applicable Rate would apply automatically in the event an ATP auction was not held for any reason. Because New America failed to disclose in the 2008 Annual Report filed on Form N-CSR that the Minimum Applicable Rate would be applied for Series A, B, and C dividends even though no auctions were being held for those ATP beginning in September 2008, the 2008 Annual Report was materially misleading at the time of filing. As a result, Respondents violated Section 34(b).

#### 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 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent New America cease and desist from committing or causing any violations and any future violations of Sections 23(c) and 34(b) of the Investment Company Act and Rule 23c-1 promulgated thereunder.

B. Respondents Birch and Terry cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act, and from causing any violations and any future violations of Section 23(c) of the Investment Company Act and Rule 23c-1 promulgated thereunder.

C. Respondent New America is ordered to pay disgorgement in the amount of \$410,594.08 and prejudgment interest of \$2,805.49. This order to pay disgorgement and prejudgment interest shall be deemed satisfied by New America's voluntary payment of the Supplemental Dividend to ATP Series A, B, and C holders in the amount of \$413,399.57 on December 27, 2010.

D. Respondents Birch and Terry each shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the United States Treasury 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 Birch and Terry as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Conway T. Dodge, Jr., Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Mail Stop 6561-A, Washington, DC 20549.

E. To preserve the deterrent effect of the civil penalty, Birch and Terry 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 their payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Birch and Terry 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 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 findings in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy  
Secretary