

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10443 / December 8, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4824 / December 8, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32937 / December 8, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18303

In the Matter of

**INSTITUTIONAL INVESTOR
ADVISERS, INC.,**

Respondent.

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

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 203(e) 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 Institutional Investor Advisers, Inc. (“Respondent” or “IIA”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections

203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

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

Summary

1. This matter concerns failures by IAA, formerly a registered investment adviser to Institutional Investor Trust (“IIT”), formerly a registered investment company, regarding (i) mutual fund advertisements, and (ii) mutual fund governance and compliance.

2. First, on several occasions in 2013, IIA, through an affiliated entity, presented or distributed certain documents that offered for sale the Sector Allocation Model Fund (“Fund”), the sole series of IIT. These documents did not comply with applicable rules for mutual fund prospectuses and advertisements. The documents also contained material misstatements concerning the inflated, hypothetical, and backtested performance track record of the Fund’s sub-adviser, F-Squared Investments, Inc. (“F-Squared”). IIA did not have a reasonable basis to conclude that F-Squared’s exceptional performance claims were accurate.

3. Second, IIA caused violations of IIT’s governance and compliance obligations. IIA caused IIT’s failure to enter into a written sub-advisory contract with F-Squared for several years. IIA further caused IIT’s failure to obtain a vote of IITs shareholders or its board to approve any agreement for F-Squared to act as a sub-adviser to the Fund. Finally, IIA failed to adopt and implement required compliance policies and procedures, and IIA caused the same failure by IIT.

4. Based on the foregoing actions and omissions, IIA willfully violated Section 5(b)(1) of the Securities Act and Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder, and IIA caused violations of Sections 15(a) and 15(c) of the Investment Company Act and Rule 38a-1 thereunder.

Respondent

5. **Institutional Investor Advisers, Inc.** became registered with the Commission as an investment adviser in June 2010 (SEC File Number 801-71574). IIA was a Florida corporation headquartered in Venice, Florida. At all times, IIA’s sole advisory client was IIT, a registered investment company. On February 27, 2017, IIA withdrew its registration with the Commission. On April 25, 2017, IIA filed articles of dissolution with the State of Florida.

¹ The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

Other Relevant Entities

6. **Institutional Investor Trust** was formed in May 2010 and became registered with the Commission as an investment company in September 2010 (SEC File Number 811-22429). IIT was a Massachusetts business trust headquartered in Venice, Florida. At all times, IIT was IIA's sole advisory client. IIT ceased doing business and liquidated and distributed its assets to shareholders in July 2016. On May 26, 2017, IIT withdrew its registration with the Commission. On June 5, 2017, IIT filed a notice with the Massachusetts Secretary of State to terminate its trust registration, with an effective termination date of May 25, 2017.

7. **Sector Allocation Model Fund** was an open-end fund and the sole series of IIT. The Fund's registration statement filed with the Commission became effective on September 7, 2010. The Fund operated from September 2010 until its liquidation in July 2016. The Fund utilized F-Squared's AlphaSector Premium investment strategy. At its height in 2014, the Fund had a net asset value of approximately \$100 million.

8. **Trust Companies of America, Inc.** ("TCA") is a Florida corporation headquartered in Venice, Florida. TCA is not and has never been registered with the Commission. During the entire period of IIA's existence, TCA was the parent company and sole owner of IIA. TCA also is the parent company and sole owner of a trust company that is headquartered in Venice, Florida, and registered with the State of Florida ("Trust Company"). The Trust Company is not and has never been registered with the Commission.

9. **F-Squared Investments, Inc.** was an investment adviser registered with the Commission from March 2009 to January 2016 (SEC File No. 801-69937), and was headquartered in Wellesley, Massachusetts. F-Squared was the sub-adviser to the Fund. F-Squared sub-licensed its approximately seventy-five AlphaSector indexes to unaffiliated third parties who managed assets pursuant to these indexes. On December 22, 2014, the Commission instituted a settled fraud action against F-Squared, in which F-Squared admitted, among other things, to making the materially false claims that (a) the signals that formed the basis of its AlphaSector index returns had been used to manage client assets from April 2001 to September 2008, and (b) the signals resulted in a track record that significantly outperformed the S&P 500 Index from April 2001 to September 2008. *See In the Matter of F-Squared Investments, Inc.*, Advisers Act Rel. No. 3988 (Dec. 22, 2014).

Facts

Introduction to F-Squared and Fund Formation

10. Following the 2008 financial crisis, the Trust Company was looking for an investment strategy for its individual client portfolios that would protect against downside risk in the market. In early 2009, the Trust Company was introduced to F-Squared and the AlphaSector strategies and indexes.

11. F-Squared marketed the AlphaSector strategies as sector rotation strategies that were based on an algorithm that yielded a "signal" indicating whether to buy or sell nine

industry-specific exchange-traded funds (“ETFs”). If the algorithm produced buy signals for three or fewer sector ETFs, the strategies provided for some or all assets to be invested in cash equivalents. The goal of the AlphaSector strategies was to participate in upward trending markets and to protect against losses in down markets by maintaining the ability to move sector ETF investments to cash equivalents as a way to avoid losses.²

12. F-Squared falsely described and made contradictory statements about the AlphaSector strategies in documents it provided to TCA and the Trust Company. For example, one document F-Squared provided to TCA and the Trust Company stated that the AlphaSector returns represented “hypothetical backtested performance,” while other documents stated that the AlphaSector returns were “*not* backtested” (emphasis added) and were “based on active strategies” with an inception date of 2001. F-Squared also represented, in various documents it provided to TCA and the Trust Company, that its AlphaSector track record had significantly outperformed the S&P 500 Index from April 2001 to September 2008. In reality, no assets tracked the strategies until 2008, and F-Squared’s backtested track record was substantially overstated.

13. From 2009 to 2010, the Trust Company managed some of its clients’ assets in separate accounts using the AlphaSector Rotation strategy, which provided monthly signals. During this “test” period, TCA and the Trust Company determined that it would be more efficient to make the AlphaSector strategies available to the Trust Company’s clients through a mutual fund that would utilize F-Squared’s AlphaSector Premium strategy, which provided weekly signals.

14. In the spring of 2010, TCA formed and filed for the registration of IIT, the Fund, and IIA as the investment adviser to IIT. Like the Trust Company, IIA was a wholly-owned subsidiary of TCA. IIA and the Trust Company used the same office space, computer network, and email system. All emails related to IIA’s business were sent using the Trust Company’s email address, and both entities had overlapping employees. IIA did not have any staff that was not also Trust Company staff. The Fund’s prospectus identified TCA, IIA, IIT, and the Trust Company as being under common control with the Fund. The advisory contract between IIA and IIT contemplated that Trust Company employees would provide services to IIT (and in fact they did, for example by preparing and filing IIA and IIT’s periodic reports with the Commission). IIA and IIT’s shared compliance manual also identified all IIA, IIT, and Trust Company employees as affiliated persons. The Trust Company was the Fund’s custodian. All Trust Company clients who invested in the Fund did so through the Trust Company as the institutional shareholder of record for their interests in the Fund.

² F-Squared created several AlphaSector strategies and sub-licensed approximately 75 AlphaSector indexes. The AlphaSector Rotation and AlphaSector Premium indexes that are the subject of this matter were based, in whole or in part, on investments in U.S. equity ETFs. As with all indexes, the performance of the AlphaSector Rotation and AlphaSector Premium indexes are inherently hypothetical in the sense that the index does not purport to reflect the performance of any particular client or account. However, the AlphaSector Rotation and AlphaSector Premium indexes were advertised as being based on strategies that had been in place since 2001, and therefore the performance of these indexes was advertised as “not backtested,” when in fact the performance was backtested.

Fund Advertisements Were Materially Misleading

15. After the Fund's formation, IIA, through its affiliate, the Trust Company, disseminated Fund marketing materials to Trust Company clients or prospective clients, who also were prospective Fund investors. On several occasions between February and July 2013, IIA, through the Trust Company, used client presentations and newsletters that included historical performance returns to advertise and offer for sale the Fund. IIA incorporated into these documents information from F-Squared that reflected that the AlphaSector strategies had significantly outperformed the S&P 500 Index over an extended period. Despite the above-described contradictory statements from F-Squared to TCA and the Trust Company about the performance of the AlphaSector strategies, IIA did not further investigate or seek supporting documentation concerning F-Squared's reported returns. IIA thus did not have a reasonable basis to conclude that F-Squared's exceptional performance claims were accurate.

16. For example, in June and July 2013, IIA, through the Trust Company, incorporated F-Squared advertising materials into at least three presentations provided to clients and prospective clients of the Trust Company, who also were prospective investors in the Fund, and at least two of whom ultimately invested in the Fund. The materials, and in particular a slide in the presentations bearing the Fund's name and ticker, falsely showed that the AlphaSector Premium index substantially outperformed the S&P 500 Index from 2002 to 2012. The presentations made no distinction between AlphaSector performance and Fund performance but in fact showed only the AlphaSector index returns and not Fund performance. In two of the presentations, the slide showing the AlphaSector historical performance directed the reader to "see the 'important information' on the final pages for disclosures that are an integral part of this presentation." However, none of the presentations incorporated any such information from the F-Squared materials or otherwise.

17. In addition, IIA, through its employees and/or employees of the Trust Company, created a chart reflecting annual year-end performance returns for the Fund and other selected investments used in client portfolios, compared to certain benchmarks (including the S&P 500 Index), for the prior five years (*i.e.*, 2008 to 2012). The performance chart had a footnote that indicated that the Fund was formed in September 2010 and that earlier returns shown in the chart were "based on the fund's underlying model, AlphaSector Premium, in operation since 2001." The overall returns for the Fund reflected in the chart, across the 2008 to 2012 period, were better than the returns for nearly every other type of investment on the chart. The performance chart was incorporated into the Trust Company's February 2013 newsletter, with a heading in bold text that stated, "SAM Fund outperforms others" and a revised footnote stating "Inception Date of [the Fund] was September 2010. From May 2010 to Fund Inception, individual ETFs were used in client portfolios. All prior periods returns are based on the model as no client dollars were invested." This footnote did not state that the model returns before October 2008 were backtested and inflated. The February 2013 newsletter was sent to newsletter subscribers and available on the Trust Company's website.

18. The 2013 client presentations and February 2013 newsletter both included performance returns for periods before the Fund's inception in 2010. For the period prior to October 2008, the documents incorporated the AlphaSector Premium index backtested and

substantially inflated performance returns, based on false information provided by F-Squared. As noted above, IIA did not have a reasonable basis to conclude that F-Squared's performance claims were accurate. These documents also failed to disclose that the AlphaSector returns presented for the period before October 2008 were backtested.

19. The February 2013 newsletter included two years of past performance data for the Fund, but did not include a legend disclosing, among other things, that past performance does not guarantee future results and that current performance may be lower or higher than the performance data quoted, as contemplated by Rule 482(b)(3)(i) under the Securities Act. The February 2013 newsletter and presentations also omitted statements contemplated by Rule 482(b)(1) under the Securities Act, including a statement that: (i) advises an investor to consider the investment objectives, risks, and charges and expenses carefully before investing; (ii) explains that the prospectus contains such information as well as other information about the investment company; (iii) identifies a source from which an investor may obtain a prospectus; and (iv) states that the prospectus should be read carefully before investing. In addition, the February 2013 newsletter and presentations included performance returns for periods prior to the effective date of the Fund's registration statement, which is not consistent with the provisions of Rule 482(d)(3) under the Securities Act.

20. In addition to creating and disseminating the materials described above that contained false or misleading information, IIA, through its employees and employees of the Trust Company, organized a luncheon event in March 2013 to introduce the F-Squared strategy to the Trust Company's investment staff and to Trust Company clients and prospective clients, who also were prospective Fund investors. F-Squared gave a presentation at the luncheon, which included the backtested and substantially inflated AlphaSector index returns. Copies of the presentation were not available for luncheon attendees to take with them. However, a copy of an earlier F-Squared presentation, which was the same in all material respects to the luncheon presentation, was emailed to at least one Trust Company client or prospective client. In at least one other instance in 2013, a Trust Company employee who also served as an officer of IIT, in his IIT capacity, emailed a copy of an F-Squared presentation containing the backtested and substantially inflated AlphaSector track record to a third party, noting that the Fund employed F-Squared's strategy. IIA did not take any steps to verify any of the performance claims in F-Squared's luncheon presentation, or any other F-Squared presentation. In April 2013, a few weeks after the luncheon, IIA, through its employees and/or employees of the Trust Company, included a "special report" in the Trust Company's newsletter concerning both the luncheon and the Fund. The special report did not incorporate F-Squared's false historical performance data, but it described F-Squared's strategy, the Fund's formation, and the Fund's use of F-Squared's strategy, and it said that readers could "learn more" about the Fund by contacting the Trust Company. The special report was sent to newsletter subscribers and available on the Trust Company's website.

Fund Governance and Compliance Failures

21. From the Fund's inception in 2010 through 2015, F-Squared acted as the sub-adviser to the Fund and provided the trading signals for the Fund. IIA and F-Squared split the 75 basis point management fee charged to the Fund, with F-Squared receiving 60 basis points and

IIA retaining 15 basis points.³ IIT's board was aware of the fee arrangement with F-Squared. However, there was no written sub-advisory contract with F-Squared until December 2014, and thus IIT's shareholders never approved any written contract with F-Squared before December 2014.

22. IIT's board met annually between 2010 and 2016. IIA presented a written advisory contract between IIA and IIT to IIT's board for approval. Meeting minutes documented the board's approval of IIT's advisory contract with IIA. However, the minutes did not at any time mention the board's evaluation or approval of the terms of any sub-advisory contract or agreement with F-Squared. Although IIT's board knew that F-Squared was acting as the Fund's sub-adviser, IIA did not present any written or oral contract or agreement that covered all the fundamental terms relating to F-Squared's role as sub-adviser (including the December 2014 contract) to IIT's board for evaluation or approval. Thus, IIT's board did not vote to approve any agreement with F-Squared at any in-person meeting called for that purpose.

23. Beginning in late 2015, the Commission's Office of Compliance Inspections and Examinations conducted an examination of IIA and IIT and requested all compliance policies and procedures. IIA produced a single, undated compliance manual in response. IIA represented that the manual was developed in 2015. Before that, IIA and IIT did not have any compliance manual. In addition, neither IIA nor IIT conducted annual reviews of the adequacy of their compliance programs. Between at least 2011 and 2016, IIT's board received one-paragraph annual letters, signed by IIA's president, indicating that an annual compliance review of IIA and IIT had been conducted. In fact, IIA did nothing more than draft and send these letters. No reviews were conducted or documented.

Violations

24. As a result of the conduct described above, Respondent willfully violated⁴ Section 5(b)(1) of the Securities Act, which makes it unlawful for any person, directly or indirectly, to transmit by means of interstate commerce any prospectus relating to any security as to which there is an effective registration statement unless the prospectus meets the requirements of Section 10 of the Securities Act. Section 10(a) requires prospectuses to include the majority of information contained in the registration statement. Section 10(b) allows a prospectus, for purposes of Section 5(b)(1), to omit or summarize certain of that information in accordance with Commission rules and requires it to be filed as part of the registration statement (unless by rule

³ At all times, the vast majority of investors in the Fund were Trust Company clients who invested through the Trust Company, which was the institutional shareholder of record. Over time, the Fund also became available on the platforms of two unaffiliated broker-dealers. Trust Company clients who invested in the Fund received a credit for any management fees that IIA received from the Fund that were attributable to such investments. As a result, Trust Company clients who invested any assets in the Fund did not pay double fees. IIA received and retained only its portion of fees attributable to Fund investors through the broker-dealer platforms.

⁴ 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)).

the Commission does not so require). “Prospectus” is defined under Section 2(a)(10) of the Securities Act as any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security. Excluded from the definition of “prospectus” are (a) a communication sent or given after the effective date of the registration statement if a registration statement is sent or given prior to or at the same time as such communication, and (b) a communication that states from whom a registration statement may be obtained, and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain any other information as the Commission may permit by rule. Here, IIA, through its affiliate, transmitted the February 2013 and April 2013 newsletters, among other documents, by interstate means, as described above. These documents met the definition of a “prospectus” because each constituted a written advertisement, letter, or communication that offered for sale interests in the Fund, or, at a minimum, conditioned the market for interests in the Fund. However, the documents failed to comply with the requirements of Section 10(a) of the Securities Act, and they were not filed with the Commission as required by Section 10(b) of the Securities Act. In addition, the documents did not include statements that would enable reliance upon the provisions of Rule 482(b)(1), 482(b)(3)(i), and 482(d)(3) under the Securities Act to bring the documents into compliance with Section 10 of the Securities Act. Moreover, although the documents constituted communications made after the effective date of the Fund’s registration statement, they were not accompanied or preceded by a copy of the Fund’s registration statement, and they did not state from whom a registration statement could be obtained and did more than merely identify the security, state the price thereof, and state by whom orders will be executed. Consequently, IIA’s transmission of these documents, through its affiliate, violated Section 5(b)(1).

25. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit an investment adviser to a pooled investment vehicle from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading to any investor or prospective investor in the pooled investment vehicle. IIA, through its affiliate’s presentations and the February 2013 newsletter that included the performance chart, which included substantially inflated returns as well as backtested returns that were not identified as such, among other documents, made material misstatements or omissions to prospective investors in the Fund.

26. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require registered investment advisers, among other things, to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to conduct an annual review of the adequacy and effectiveness of such policies and procedures. As described above, IIA failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and IIA failed to conduct an annual review of the adequacy of such compliance policies and procedures.

27. As a result of the conduct described above, Respondent caused a violation of Rule 38a-1(a) under the Investment Company Act, which requires registered investment companies, among other things, to (i) adopt and implement written policies and procedures reasonably

designed to prevent violation of the federal securities laws, including policies and procedures that provide for compliance oversight by the fund's adviser, and (ii) conduct an annual review of the adequacy of such policies and procedures. As described above, IIA caused IIT's failure to adopt and implement written compliance policies and procedures and conduct an annual review of the adequacy of such compliance policies and procedures.

28. As a result of the conduct described above, Respondent caused a violation of Section 15(a) of the Investment Company Act, which makes it unlawful for any person to serve or act as an investment adviser to a registered investment company except pursuant to a written contract approved by the vote of a majority of the voting securities of such investment company. As described above, there was no written contract for F-Squared to act as a sub-adviser to the Fund before December 2014 and no shareholder approval of any such written contract. By nonetheless using F-Squared as a sub-adviser for the Fund, IIA caused a violation of Section 15(a).

29. As a result of the conduct described above, Respondent caused a violation of Section 15(c) of the Investment Company Act, which makes it unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. As described above, IIT's board did not vote to approve the terms of any agreement pursuant to which F-Squared acted as a sub-adviser to the Fund at a meeting called for that purpose. By nonetheless using F-Squared as a sub-adviser to the Fund, IIA caused IIT's violation of Section 15(c).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

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

A. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent as the Respondent in these proceedings, and the file number of these proceedings, with a copy of the cover letter and check or money order to be sent to Robert B. Baker, Assistant Regional Director, Asset Management Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

B. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary