

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79814 / January 17, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17790

In the Matter of

ALLERGAN, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Allergan, Inc. (“Allergan, Inc.” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (the “Order”), as set forth below.

III.

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

A. SUMMARY

1. This matter involves Respondent's failure to comply with the disclosure requirements concerning merger and acquisition negotiations with third parties that it conducted in response to a tender offer. A public company that is the subject of a tender offer has an obligation to express a position on the tender offer in a Schedule 14D-9. *See* Exchange Act Rules 14d-9 and 14e-2. Item 7 of Schedule 14D-9 (incorporating Item 1006(d) of Regulation M-A) requires the subject of a tender offer to provide certain disclosure, as elaborated further herein, if it enters into "negotiations" "in response to the tender offer" that relate to an "extraordinary transaction," including a merger or acquisition transaction. After a Schedule 14D-9 is filed, Rule 14d-9(c) obligates the filer to amend the Schedule 14D-9 if any material change occurs.

2. On June 23, 2014, Respondent filed a Schedule 14D-9 in response to a tender offer from Valeant Pharmaceuticals International Inc. ("Valeant") and co-bidders, stating that the offer was inadequate and that the company was not undertaking or engaged in negotiations that could result in an "extraordinary transaction." Subsequent to this June 2014 disclosure, Respondent entered into negotiations with two parties concerning potential merger and acquisition transactions.

3. First, as set forth further below, Respondent engaged in negotiations with Company A in August and September 2014 concerning a potential acquisition by Respondent of Company A. Respondent never publicly disclosed these negotiations and thus failed to amend its June 23, 2014 Schedule 14D-9 to disclose timely its negotiations with Company A, as required by Item 7 of Schedule 14D-9 (incorporating Item 1006(d) of Regulation M-A). Due to issues identified in due diligence, Respondent did not acquire Company A.

4. Second, as set forth further below, Respondent also entered into negotiations with Actavis plc ("Actavis") concerning a possible acquisition of Respondent by Actavis. On October 6, 2014, in discussions between Actavis's and Respondent's chief executive officers, Actavis proposed to pay \$185 to \$200 per share to acquire Respondent, and Respondent responded that the proposed acquisition price must be above \$200 in order to move forward with discussions. Actavis made a series of increasing price proposals through October. The companies eventually agreed to allow due diligence to proceed with the understanding that Actavis was proposing between \$210 and \$215 per share and that Respondent wanted more than \$215 per share. On November 5, 2014, the parties entered into a confidentiality and standstill agreement and due diligence commenced. On November 17, 2014, the parties announced the execution of a merger agreement for a transaction at \$219 per share.

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

5. As set forth further below, Respondent failed to disclose its negotiations with Actavis in a timely manner despite repeated requests from staff of the Commission’s Division of Corporation Finance (“Corp. Fin.”). Following news reports of rumors that Respondent was in talks with potential friendly merger partners, Corp. Fin. staff urged Respondent to make appropriate disclosures. Specifically, on September 23, 2014, Corp. Fin. staff informed Respondent’s counsel that, to the extent that Respondent was engaged in merger negotiations, Schedule 14D-9 required those negotiations to be disclosed. Corp. Fin. staff reiterated this message in subsequent communications with Respondent’s counsel.

6. As set forth further below, Respondent failed to make a full and complete disclosure of its negotiations with Actavis after October 6, 2014, as required by Item 7 of Schedule 14D-9 (incorporating Item 1006(d) of Regulation M-A). On November 3, 2014, Respondent disclosed in a Schedule 14A filing that it had been “approached by another party regarding a potential transaction,” without revealing anything more. On November 6, 2014, Respondent filed an amended Schedule 14A and an amended Schedule 14D-9, stating that it was in discussions concerning a possible merger with another party that “may lead to negotiations.” Respondent did not disclose that it was in negotiations with Actavis until the November 17, 2014 announcement that the parties had executed a merger agreement.

B. RESPONDENT

7. **Allergan, Inc.**, an indirect, wholly-owned and operating subsidiary of Allergan plc (formerly known as Actavis), is a Delaware incorporated company with its headquarters located in Parsippany, New Jersey. Until March 17, 2015, Allergan, Inc.’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §7881] and traded on the New York Stock Exchange.

C. OTHER RELEVANT ENTITIES

8. **Allergan plc** is an Ireland incorporated company with its headquarters in Dublin, Ireland. Its common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. §7881] and trades on the New York Stock Exchange. Until June 15, 2015, Allergan plc was known as Actavis. Actavis completed its acquisition of Respondent in March 2015.

9. **Company A** was a company with its headquarters in Raleigh, North Carolina whose common stock traded on the NASDAQ stock exchange until 2015, when it was acquired by another company.

D. RESPONDENT RECEIVES A TENDER OFFER

10. In the spring of 2014, Valeant and Pershing Square Capital Management, L.P. formed a joint venture, PS Fund 1, LLC (“PS Fund 1”), to launch an acquisition bid for Respondent. On April 22, 2014, Valeant announced a proposal to acquire Respondent under which each Respondent share would be exchanged for \$48.30 in cash and 0.83 shares of Valeant’s common stock. On May 12, 2014, Respondent formally rejected the offer, stating that

it substantially undervalued Respondent and was not in the best interests of Respondent or its shareholders.

11. On June 2, 2014, PS Fund I and related persons filed a preliminary proxy statement on Schedule 14A with the Commission with the intent to solicit revocable proxies from Respondent shareholders in order to call a special meeting to remove and replace six Respondent board members and to request that the board engage in good faith merger and acquisition discussions with Valeant. On June 16, 2014, Respondent responded to the special meeting request with a Schedule 14A filing, stating that a special meeting was not in the best interests of Respondent or its shareholders.

12. On June 18, 2014, Valeant and PS Fund I (collectively, the “Co-Bidders”) filed a Schedule TO with the Commission making a tender offer to purchase Respondent’s stock (the “Tender Offer”).

13. Respondent responded to the Tender Offer in a June 23, 2014 Schedule 14D-9 filed with the Commission. The Schedule 14D-9 included the June 21, 2014 opinions of Respondent’s financial advisors, and stated that the Respondent board recommended against the Tender Offer. Respondent’s Schedule 14D-9 contained the following statement in response to the requirement of Item 1006(d) of Regulation M-A to disclose “whether or not any negotiation is being undertaken or is underway” in response to the Tender Offer:

[Respondent] is not now undertaking or engaged in any negotiations in response to the [Tender] Offer that relate to or could result in one or more of the following or a combination thereof: . . . (2) any extraordinary transaction, such as a merger, reorganization or liquidation, involving [Respondent] or any of its subsidiaries Notwithstanding the foregoing, the Board has determined that disclosure with respect to the possible terms of any transaction or proposals that might result from or be made during any of the negotiations referred to in this Item 7 might jeopardize continuation of any such negotiations. Accordingly, the Board has instructed management not to disclose the possible terms of any such transactions or proposals, or the parties thereto, unless and until an agreement in principle relating thereto has been reached or, upon the advice of counsel, as may otherwise be required by law.

14. Rule 14d-9(c) required Respondent to update promptly this Schedule 14D-9 disclosure, if it subsequently entered into “negotiations” with a third-party under Item 1006 of Regulation M-A. Respondent did not provide any updates regarding the substance of this specific disclosure until November 6, 2014.

E. RESPONDENT CONTEMPLATES POTENTIAL ALTERNATIVE MEASURES

15. After Valeant made its acquisition offer to Allergan in April 2014, and continuing after the June 2014 Tender Offer, Respondent began considering potential alternatives. As part of this process, Respondent considered (a) seeking to remain independent; (b) making a strategic acquisition using a portion of its cash, which could also make it more difficult for the combined entity to be acquired by the Co-Bidders; and (c) scenarios in which another bidder would acquire

Respondent in a friendly transaction. For example, in a July 14, 2014 presentation to the Respondent board, bankers discussed “strategic opportunities” for acquisitions (including Company A) and potential white knights (including Actavis). At this time, Respondent did not pursue being acquired.

i. Respondent’s Communications with Company A

16. In the fall of 2013, Respondent’s board discussed Company A as a potential acquisition target. In December 2013, Respondent’s chief executive officer met with Company A’s chief executive officer, making a general acquisition proposal and seeking to conduct due diligence of Company A. Company A rebuffed the proposal because it was finalizing the acquisition of another company at that time. Respondent did not communicate any purchase price to Company A at that time. Respondent’s chief executive officer reached out to Company A’s chief executive officer a few more times before receiving the June 18, 2014 Tender Offer, but never made an offer to acquire Company A for any specific price.

17. On June 27, 2014, after receiving the Tender Offer on June 18, Respondent’s chief executive officer sent an email to Company A’s chief executive officer, setting up a call to speak. They spoke on July 1, 2014 about a potential acquisition of Company A by Respondent and agreed to meet in person.² On July 29, 2014, Respondent proposed to acquire Company A for \$180 per share, subject to the satisfactory completion of due diligence. This was the first time that Respondent had made a proposal to purchase Company A for a specific price.

18. Respondent understood that a possible acquisition of Company A by Respondent could make it harder for it to be acquired by the Co-Bidders through the Tender Offer. For example, the July 14, 2014 banker presentation to the Respondent board included a statement that, “[p]otential combination of [Respondent and Company A] is likely to meaningfully reduce [Co-Bidders’] ability to pay.”

19. Respondent’s and Company A’s chief executive officers next spoke on August 12, 2014, when Company A’s chief executive officer stated that Company A had “a pipeline and deserves a higher premium,” as Respondent’s chief executive officer later reported to Respondent’s bankers. One of Respondent’s bankers responded: “Positive sign she is engaging on value, which indicates some willingness to negotiate and brings us to the table.”

20. On August 14, 2014, Company A indicated to Respondent that its board believed the \$180 proposal was insufficient and requested that Respondent “put [its] best offer on the table.”

² Respondent amended its Schedule 14D-9 on July 10, 2014, and attached as an exhibit a transcript of a July 9 interview on CNBC in which Respondent’s chief executive officer discussed the company’s interest in pursuing a strategic acquisition. In addition, Respondent’s chief executive officer discussed publicly in a July 21, 2014 earnings call that Respondent was considering a strategic acquisition to add a new “pillar” to Respondent’s pharmaceutical product offerings.

21. On August 19, 2014, a news organization reported that Respondent had approached Company A with respect to a potential acquisition, and Company A's share price increased 15.5% from the previous day's closing price.

22. On August 20, 2014, Respondent proposed to purchase Company A for \$200 per share in cash and confirmed the offer in writing. The proposal was subject to satisfactory completion of due diligence. On August 25, 2014, after meeting with Company A's board, Company A's chief executive officer presented a counterproposal of \$210 per share. The following day, Respondent offered Company A \$205 per share in return for three weeks of exclusivity, subject to satisfactory completion of due diligence. Company A agreed to enter into due diligence on this basis and due diligence began.

23. In view of the receipt of the counterproposal on price on August 25, Respondent was required to amend its Schedule 14D-9 to disclose that negotiations were "being undertaken or [were] underway and [were] in the preliminary stages." Disclosure of possible terms of or the party to the potential transaction was not required unless and until an agreement in principle was reached if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. Instruction to Item 1006(d)(1) of Regulation M-A, incorporated by Item 7 of Schedule 14D-9.

24. Due to issues identified in Respondent's due diligence of Company A, Respondent decreased its proposed acquisition price to \$175 per share. Company A rejected this revised proposal in a September 24, 2014 letter. Respondent did not acquire Company A.

25. Respondent never disclosed or otherwise amended its June 23, 2014 Schedule 14D-9 to provide shareholders with information about its negotiations with Company A.

ii. Respondent's Communications with Actavis

26. On July 30, 2014, Respondent received a written non-binding proposal from Actavis, seeking to acquire Respondent for \$175 per share in cash.

27. On August 11, 2014, Respondent's chief executive officer informed Actavis's chief executive officer that the \$175 per share proposal was insufficient to warrant further discussions.

28. On August 25, 2014, Respondent's board met with management and outside legal and financial advisors. Among other topics, Respondent's board and its advisors discussed potential acquisitions by Respondent, the value of Respondent and market perceptions of Respondent's long-term outlook. Respondent's board also discussed Actavis's \$175 per-share proposal and the ability of Actavis to finance a potential transaction. Subsequent to the meeting, Respondent's chief executive officer spoke to Actavis's chief executive officer by telephone and both parties indicated that they did not intend to engage in further discussions.

29. On October 6, 2014, Actavis's chief executive officer made another proposal to Respondent, expressing an interest in a transaction with a value to Respondent's stockholders 5% to 15% higher than Actavis's previous non-binding proposal, implying a value per Respondent share of approximately \$185 to approximately \$200. Respondent's chief executive officer

informed Actavis's chief executive officer that he believed that Respondent's board would require a proposal with a value to Respondent's stockholders of greater than \$200 per share in order to move forward with discussions.

30. In view of Respondent's indication of a specific price level to Actavis on October 6, Respondent was required to amend its Schedule 14D-9 to disclose that negotiations had begun, even though they were in the preliminary stages. *See* ¶ 23, *supra*.

31. An October 7, 2014 news article reported that Actavis planned to approach Respondent about a potential merger and that Respondent would consider a takeover proposal that valued the company above \$200 per share.

32. On October 8, 2014, Actavis increased its proposal with a range of \$195 to \$205 per Respondent share with a portion of the consideration made up of newly issued Actavis ordinary shares representing approximately 20% of Actavis's outstanding ordinary shares. Respondent's chief executive officer responded to Actavis's chief executive officer that such a wide value range was inadequate.

33. On October 14, 2014, Actavis informed Respondent that if Actavis increased its October 8 proposal with additional cash, the increase would only relate to the lower end of the previously indicated range, and only be for \$5.00 per Respondent share, implying a value of \$200 to \$205 per Respondent share. Respondent's chief executive officer informed Actavis's chief executive officer that the revised proposal was inadequate.

34. On October 22, 2014, Actavis increased its proposal to a value of \$210 per Respondent share, consisting of a combination of cash and newly-issued Actavis ordinary shares representing approximately 27% of Actavis's outstanding ordinary shares. Respondent's chief executive officer informed Actavis's chief executive officer that the revised proposal was still inadequate.

35. Throughout October 2014, Respondent's board met with Respondent's management, bankers, and legal counsel to discuss the Actavis proposals, as well as other potential strategic alternatives.

36. On October 31, 2014, Actavis proposed to acquire Respondent for a price range of \$210 to \$215 per Respondent share, consisting of a combination of cash and newly issued Actavis ordinary shares representing approximately 35% of Actavis's outstanding ordinary shares, subject to satisfactory completion of due diligence. Respondent's chief executive officer responded that he believed that Respondent's board would be willing to consider the proposal and begin discussions regarding a transaction, but that Respondent would expect Actavis to increase its proposal to a price of at least \$215 per Respondent share following due diligence.

37. On November 3, 2014, Respondent's outside counsel delivered a draft confidentiality and standstill agreement to Actavis's outside counsel. The parties executed the confidentiality and standstill agreement two days later.

38. On November 9 and 10, 2014, management of Respondent and Actavis attended due diligence meetings, and further due diligence activities proceeded thereafter. On

November 9, 2014, Actavis's outside counsel delivered a draft merger agreement to Respondent's outside counsel. On November 14, 2014, the chief executive officers of Respondent and Actavis, with the assistance of Actavis's executive chairman, negotiated the final substantive terms of the transaction settling on a price with a value of \$219 for each Respondent share. On November 16, 2014, the parties signed a merger agreement.

39. On September 23, 2014, following press reports that Respondent was involved in discussions with potential merger partners, Corp. Fin. staff informed Respondent's legal counsel that, to the extent any merger negotiations were being conducted, a disclosure under Item 7 of Schedule 14D-9 (incorporating Item 1006 of Regulation M-A) was required. Corp. Fin. staff had additional discussions of this requirement with Respondent's counsel in October 2014. Respondent's legal counsel responded by indicating, among other things, that disclosure was not required and that "[b]ecause [Respondent's] Board has determined that disclosure with respect to the possible terms of any transaction might jeopardize continuation of any such negotiations, the Board has instructed management not to disclose the possible terms of any such transactions or proposals, or the parties thereto, unless and until an agreement in principle relating thereto has been reached or, upon the advice of counsel, as may otherwise be required by law."

40. After further discussions between Respondent's counsel and Corp. Fin. staff, on November 3, 2014, Respondent filed an amended preliminary proxy statement, Schedule 14A, that included the following additional disclosure:

Our Board had successfully pursued, and continues to pursue, a number of key initiatives to increase stockholder value. These include . . . consideration of acquisitions and strategic alternatives that increase stockholder value. For example, prior to the commencement of the tender offer and continuing during the pendency of the tender offer, we have engaged in discussions with a number of parties regarding potential transactions, one of which we announced in August 2014 (the acquisition of the LiRIS® program from TARIS Biomedical). **In addition, we have been approached by another party regarding a potential transaction.** We cannot provide assurance on the outcome of these contacts regarding transactions we have not announced and because our Board has determined that premature disclosure with respect to the possible terms of any transaction might jeopardize continuation of any discussions or negotiations, our Board has instructed management not to disclose the possible terms of any such transactions or proposals, or the parties thereto, unless and until an agreement in principle relating thereto has been reached or, upon the advice of counsel, as may otherwise be required by law. (Emphasis added.)

41. Corp. Fin. staff responded to this new disclosure by asking Respondent to disclose additional information consistent with Item 1006 of Regulation M-A. In subsequent calls between Respondent's counsel and Corp. Fin. staff on November 4, 2014, Corp. Fin. staff reiterated the belief that if Respondent was engaged in negotiations of an extraordinary transaction that this fact was material and required to be disclosed under Item 1006 of Regulation M-A. Respondent's counsel again expressed the view to Corp. Fin. staff that further disclosure was not required.

42. When Respondent filed a Schedule 14D-9 amendment, on November 6, 2014, it contained the following new disclosure:

In addition, we have been approached by another party regarding a potential merger transaction. **Discussions between us and that party have continued and may lead to negotiations.** We cannot provide assurance on the outcome of these discussions regarding transactions we have not announced. Our Board has determined that premature disclosure with respect to the possible terms of any transaction might jeopardize continuation of any discussions or negotiations, and accordingly our Board has instructed management not to disclose the possible terms or status of any such transactions or proposals, or the parties thereto, if an agreement in principle relating thereto has not been reached or, upon the advice of counsel, unless and until disclosure may otherwise be required by law. (Emphasis added.)

43. Respondent's amended Schedule 14D-9 failed to disclose that negotiations were being undertaken or were underway and in the preliminary stages. See ¶ 46, *infra*.

44. Respondent did not make further disclosure until November 17, 2014 after a merger agreement was executed.

F. RESPONDENT'S FAILURE TO COMPLY WITH ITEM 7 OF SCHEDULE 14D-9 (INCORPORATING ITEM 1006(d) OF REGULATION M-A)

45. Rule 14d-9 and Item 7 of Schedule 14D-9 (incorporating Item 1006(d) of Regulation M-A) provide, with respect to a solicitation or recommendation statement made pursuant to Section 14(d)(4) of the Exchange Act, that the person filing the statement must disclose "subject company negotiations." Item 1006(d) requires disclosure of any negotiation which is underway or is being undertaken and which relates to, among other things, a tender offer or a transfer of a material amount of assets by the subject company. Item 1006(d)(2) of Regulation M-A requires disclosure of any transaction, board resolution, agreement in principle, or signed contract that is "entered into in response to [a] tender offer." Item 1006(d)(1) of Regulation M-A requires a subject company to state "whether or not [it] is undertaking or engaged in any negotiations in response to [a] tender offer" that relate to an extraordinary transaction.

46. The "Instruction" to Item 1006(d) recognizes that negotiations can occur prior to an agreement in principle and allows target companies to withhold the "possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations." The Instruction further requires that "[i]n that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient." Once those negotiations ripen into an agreement in principle, it becomes an event required to be disclosed under Item 1006(d)(2).

47. The Commission has previously emphasized the importance of the disclosures required by Item 7 of Schedule 14D-9 (incorporating Item 1006 of Regulation M-A). In the release announcing the adoption of Rule 14d-9, the Commission stated that "the major

developments referred to in Item 7 can be one of the most material items of information received by security holders.” Exchange Act Rel. No. 16384, 18 SEC 1053, 1070 (November 29, 1979).

48. If any material change occurs in the information set forth in a Schedule 14D-9, then Rule 14d-9(c) requires that the subject company promptly disclose the change by filing an amended Schedule 14D-9 with the Commission.

49. Respondent had engaged in negotiations with Company A that were required to be disclosed by at least August 25, 2014, when Company A made a price counteroffer to Respondent of \$210 per Company A share. At that time, Respondent was undertaking or engaging in merger negotiations, which required Respondent to amend its Schedule 14D-9 and disclose the fact of the negotiations to its shareholders.

50. Respondent had also engaged in negotiations with Actavis that were required to be disclosed by at least October 6, 2014, when Respondent indicated in response to a proposal from Actavis that a proposal with a value of greater than \$200 per share would be necessary. By at least that time, Respondent was undertaking or engaging in merger negotiations, which required Respondent to amend its Schedule 14D-9 and disclose the fact of the negotiations to its shareholders.

G. VIOLATION

51. As a result of the conduct described above, Respondent violated Section 14(d) of the Exchange Act and Rule 14d-9 thereunder.³

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Section 14(d) of the Exchange Act and Rule 14d-9 thereunder.

B. Respondent shall within 14 days of the entry of this Order, pay a civil money penalty of \$15,000,000 to the Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. The payment ordered in paragraph B above must be made in one of the following ways:

³ No finding of scienter is necessary to establish a violation of Section 14(d) or Rule 14d-9.

- (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 Allergan 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 Sanjay Wadhwa, Senior Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 200 Vesey Street, New York, NY 10281-1022.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission

Brent J. Fields
Secretary