

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82293 / December 12, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3916 / December 12, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18308

In the Matter of

Peter R. Culpepper, CPA,
Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND RULE 102(e) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING FINDINGS,
AND IMPOSING REMEDIAL SANCTIONS
AND 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 against Peter R. Culpepper, CPA (“Culpepper” or “Respondent”) pursuant to Section 8A of the Securities Act of 1933, Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

A. SUMMARY

1. From at least 2011 to early 2016, Provectus paid its then-Chief Executive Officer (“CEO”) H. Craig Dees approximately \$3.2 million in purported business travel advances and expense reimbursements that Dees fraudulently obtained and used for his personal benefit. Dees submitted false cash advance requests and expense reports that contained limited details of the claimed business trips and little, no, or fabricated supporting documentation. In addition, from at least 2013 to 2015, Provectus paid its then-Chief Financial Officer (“CFO”), Respondent Peter Culpepper, \$199,194 in perquisites and payments for business travel that Culpepper used for unauthorized and/or personal expenses.

2. Provectus’ insufficient internal accounting controls contributed to and failed to detect these improper and unauthorized payments, which were not accurately recorded in the company’s books and records. As a result, Provectus’ annual reports and definitive proxy statements materially understated the compensation paid to Dees and Culpepper in the form of personal benefits and perquisites. In addition, Provectus’ annual reports stated that Provectus’ internal control over financial reporting was effective, when it was not. These annual reports and proxy statements were incorporated by reference in registration statements offering shares of Provectus’ common stock.

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

3. As CFO, Culpepper had responsibility for Provectus' internal accounting controls. Culpepper failed to implement sufficient controls for travel advances and expense reimbursements, and failed to ensure compliance with certain of Provectus' expense payment controls. In his role as CFO, Culpepper reviewed, determined the need for, and sought approval of Dees' travel expense requests even though he should have questioned whether Dees was obtaining improper payments from Provectus. Culpepper knew or should have known that Dees' travel expense requests lacked sufficient supporting documentation and explanations of business purpose. Culpepper also failed to maintain and submit accurate and complete records of certain of his own travel expenses. Culpepper's improper conduct was a cause of Provectus' insufficient accounting controls and its failure to record and disclose properly the payments made to Dees and Culpepper.

B. RESPONDENT AND RELEVANT INDIVIDUALS

4. Respondent Peter R. Culpepper was Provectus' Chief Financial Officer from February 2004 to April 2016, Chief Operating Officer from February 2008 to December 2016, and interim Chief Executive Officer from February 2016 until his termination in December 2016. Culpepper is licensed as a CPA in Tennessee and Maryland.

5. Provectus Biopharmaceuticals, Inc., incorporated in Delaware, is a development stage biotechnology company based in Knoxville, Tennessee. Provectus' common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Provectus' common stock and certain of its warrants traded on the NYSE MKT from May 2014 to October 2016, when they were suspended from trading. They were ultimately delisted by the NYSE MKT effective May 1, 2017. Provectus' common stock currently trades on the OTCQB Marketplace under the ticker symbol "PVCT." From 2011 to 2016, Provectus' only employees were its three founding executives and Culpepper.

6. H. Craig Dees was a co-founder of Provectus and served as its Chief Executive Officer and Chairman of the Board from 2002 until his resignation in February 2016.

C. FACTS

1. Background and Provectus' Deficient Internal Accounting Controls

7. During at least 2011 to early 2016, Provectus' Code of Business Conduct prohibited personal use of corporate assets and required all business expense accounts to be documented and recorded accurately and in a timely way. However, Provectus had limited policies or internal accounting controls regarding travel and entertainment expenses and reimbursements. Culpepper failed to ensure that Provectus devised and maintained sufficient internal accounting controls related to advances and reimbursements.

8. Provectus had insufficient internal accounting controls regarding cash advances for travel expenses. For example, there was no requirement to substantiate the business purpose

of an advance, to submit receipts showing the use of advanced funds, or to reconcile expenses with advances. There was also no limit on the amount of funds that could be advanced.

9. Provectus' executives used their own credit cards or cash for company expenses and Provectus' general corporate expense reimbursement policy required employees to submit expense reports containing an itemized list of expenses together with support for each item. As noted below, Provectus failed to adhere to this policy when it reimbursed Dees and Culpepper without requiring support or itemization for claimed expenses. In addition, the policy was insufficient as applied to travel expenses. For example, the policy did not define "support" or require the submission of third-party receipts. The policy also did not require employees to demonstrate the business purpose of an expense or to submit expense reports or support within a designated amount of time.

10. Provectus also had insufficient controls, or controls that were not followed, for review and authorization of disbursements to employees made by check or wire, which included travel advances and expense reimbursements, as noted below.

11. As CFO, Culpepper had responsibility for devising and maintaining Provectus' internal accounting controls. Culpepper assisted with the design and approved Provectus' corporate expense reimbursement policy. That payment policy required all company expenses, including employee expense reports, to be processed through the CFO and to be approved by two executives other than the CFO. The policy also required the CFO to submit employee expense reports to the company's provider of bookkeeping services to be reviewed for accuracy, completeness, and supporting documentation.

12. In 2016 and 2017, after Provectus conducted an internal investigation of certain of Dees' and Culpepper's travel expenses, Provectus disclosed in its periodic reports that it had material weaknesses in its internal control over financial reporting related to travel advances and expense reimbursements and that its internal control over financial reporting was not effective.

2. Provectus' Payments to Dees

13. From 2011 until he resigned in February 2016, Provectus paid Dees approximately \$3.2 million for purported business-related travel advances and expense reimbursements. Dees fraudulently obtained the funds and used the majority to pay for unauthorized personal expenses, including personal travel, cosmetic surgery procedures for women, meals, tips and gratuities, and entertainment. Culpepper reviewed each of Dees' requests for travel advances or reimbursement, determined the need for them to be paid, and requested that two other executives approve them. At times, Culpepper himself acted as one of the two approving executives for Dees' payments, if another approving executive was unavailable.

14. The majority of the \$3.2 million was paid in the form of cash advances. Provectus permitted Dees to obtain travel advances based on requests he made in emails to Culpepper that contained vague reasons for his travel and lacked details justifying the advance amounts. Culpepper sought approval of Dees' advances despite these deficiencies.

15. In addition, Provectus permitted Dees to obtain travel advances even though he submitted limited, fabricated, or no expense documentation reconciling his advances to his actual expenses. For his 2011 and 2012 travel advances, Dees submitted expense reports for the majority of the advances he received. These reports, which were submitted to Culpepper, often lacked documentation and were deficient in numerous respects. For example, Dees failed to apply approximately half of the advances he received to the expenses he ultimately reported. Instead, he sought reimbursement of the full amount of those expenses without regard to the advances he had previously received. The expense reports frequently contained no or limited itemization of expenses and often failed to include third-party receipts. When Dees included receipts, they were often not authentic, either because the receipt was entirely fabricated or altered in some way, such as with Dees' handwritten notations adding large dollar charges. The questionable nature of the receipts was frequently apparent on their face. Finally, certain of Dees' 2011 and 2012 expense reports sought reimbursement of travel charges for Dees' personal travel companions but did not identify those charges as personal. Despite the insufficient detail and questionable support of Dees' expense reports, Culpepper approved or requested approval of Dees' reimbursements.

16. For his 2013, 2014, and 2015 travel advances, Dees submitted no expense reports at all. Culpepper knew or should have known that Dees was not submitting expense reports with receipts to reconcile his travel advances. On at least one occasion during this period, Culpepper informed Dees that he needed to resume submitting receipts as Dees had done in the past, but Dees continued not to submit receipts or other documentation of his travel expenses. During this period, the dollar amount of Dees' travel advances grew substantially. In addition, Provectus had stopped paying cash bonuses to Dees and the other executives after April 2012, and only paid cash bonuses again for 2015, but in much smaller amounts compared to prior bonuses.

17. In early 2016, after concerns were raised within Provectus about the lack of support for Dees' travel advances, Dees submitted receipts for some of his 2015 travel advances. Most of those receipts were not authentic and concealed Dees' use of the funds for personal expenses. Dees failed to substantiate other expenses at all. Despite the inadequate support and dubious nature of receipts Dees submitted, Culpepper continued to request approval of Dees' travel advances and reimbursements.

18. Dees' travel advance requests and expense reports were processed through Culpepper and paid by wire transfer. Under Provectus' general policy for payments by wire, only the CFO "determined the need" for the wire and submitted a wire transfer form to two other executives for approval. Provectus' payment policy did not require the approving executives to review the underlying support justifying the wire. In addition, at least for 2011 and 2012, it appears that Culpepper did not submit Dees' reimbursement expense reports to the company's provider of bookkeeping services to be reviewed for accuracy, completeness, and support, as required by Provectus' general expense reimbursement policy.

19. In total, Dees received at least the following amounts of travel advances and reimbursements that he used for his personal benefit: \$238,423 in 2011; \$486,974 in 2012; \$734,452 in 2013; \$819,000 in 2014; \$885,808 in 2015; and \$67,261 in 2016. In part as a result

of Culpepper's conduct, Provectus failed to record the true nature of these expenses in its books and records.

3. Provectus' Payments to Culpepper

20. From 2013 through 2015, Provectus paid Culpepper \$199,194 in personal benefits and perquisites through travel advances and reimbursements. Due in part to the company's deficient internal accounting controls, Provectus did not authorize these personal benefits or perquisites.

21. From 2013 through 2015, Provectus paid Culpepper foreign currency cash advances for approximately 130 days of overseas business travel. Culpepper used \$103,649 of those cash advances without providing a substantiated business purpose. Culpepper sought reimbursement for the advances in expense reports that included documentation showing the exchange of dollars for foreign currency. However, the expense reports did not include any documentation showing Culpepper's use of the travel advances, such as third-party receipts, which Culpepper did not maintain and Provectus did not require Culpepper to provide.

22. Provectus paid Culpepper \$82,443 in airfare charges in 2014 and 2015 for trips that were ultimately canceled. Culpepper failed to repay those amounts in the years he received them. Provectus' insufficient controls failed to detect that Culpepper did not repay these funds in the years he received them. Instead, he used the funds for his personal benefit.⁴

23. In addition, Provectus paid Culpepper at least \$13,103 in perquisites through travel expense reimbursements in 2013 through 2015. These perquisites included hotel stays, spa services, and products for Culpepper and his wife, and meals for his family. Culpepper provided certain documentation for these expenses in his expense reports. But Provectus did not require, and Culpepper generally did not submit, third-party receipts or other detailed documentation detailing the nature of the claimed expenses. Nor did Provectus require Culpepper to identify the business nature of the expenses on the supporting documentation he did submit. As a result, the personal nature of these charges was not identified in the expenses Culpepper submitted for reimbursement.

24. Culpepper's travel advance requests and expense reports were submitted to the company's provider of bookkeeping services for review and paid by check. Provectus' policy for payments by check required that the two executives who approve the checks review the payments for "proper back up" and sign the checks. In practice, however, the two approving executives authorized the payments based only on a list of checks to be paid, with the amounts and payee included, which was provided to them by Culpepper. Culpepper generally did not

⁴ In 2016 and 2017, after concerns were raised within Provectus related to Culpepper's and Dees' travel expenses, Culpepper reduced certain of his 2016 travel expenses by \$59,079, claiming that he credited that amount from airfare reimbursements he had received in 2015 for canceled trips.

provide to the executives, and they did not review, supporting documents for the payments, such as expense reports or third-party receipts.

25. In total, Culpepper received the following approximate annual amounts in personal benefits and perquisites: \$13,726 in 2013; \$81,596 in 2014; \$103,872 in 2015. As a result of Culpepper's conduct, Provectus failed to record the true nature of these expenses in its books and records.

4. Provectus' Failure to Disclose Compensation Paid to Dees and Culpepper

26. In its annual reports and definitive proxy statements filed from 2012 to 2015, Provectus failed to disclose as compensation the personal benefits and perquisites Dees received in 2011, 2012, 2013, and 2014.⁵ Those benefits were material components of Dees' compensation: Provectus disclosed no personal benefits or perquisites for Dees in these years, and the amounts exceeded his annual salary by 48% to 164% and his total compensation in 2013 and 2014.

27. The annual reports and definitive proxy statements Provectus filed from 2014 to 2016 failed to disclose as compensation the personal benefits and perquisites Culpepper received. Those benefits were material components of Culpepper's compensation: Provectus disclosed no personal benefits or perquisites for Culpepper in these years, and underreported Culpepper's non-performance-based compensation by between 2% and 17%, and his total compensation by between 2% and 11%.

28. Provectus incorporated by reference the foregoing annual reports and definitive proxy statements in registration statements filed during 2011 to 2015 that registered offerings of shares of its common stock.

29. Culpepper was responsible for the preparation of Provectus' annual reports, proxy statements, and registration statements. He reviewed, approved, and signed them. Culpepper represented in the annual reports that Provectus' internal control over financial reporting was effective. As a result of Culpepper's conduct in the approval of Dees' travel advances and expenses, Culpepper's failure to implement sufficient internal accounting controls related to travel advances and expense reimbursement, and his inadequate recordkeeping of his own travel advances and expenses, Culpepper made and caused Provectus to make material misstatements and omissions concerning his and Dees' compensation and Provectus' internal control over financial reporting.

⁵ Provectus disclosed the travel expense payments Dees received in 2015 in the annual report and definitive proxy statement it filed in 2016, which disclosed the findings of the company's investigation into Dees' travel expenses.

D. VIOLATIONS

30. As a result of the conduct described above, Culpepper willfully⁶ violated Section 17(a)(3) of the Securities Act, which prohibits any person in the offer or sale of any securities from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

31. As a result of the conduct described above, Culpepper willfully violated and was a cause of Provectus' violations of Section 14(a) of the Exchange Act and Rules 14a-3 and 14a-9 thereunder, which, among other things, prohibits the use of proxy statements containing materially false or misleading statements or materially misleading omissions; and prohibits any person from soliciting any proxy with respect to any security registered pursuant to Section 12 of the Exchange Act unless the person solicited is furnished with a definitive proxy statement containing the information specified in Schedule 14A.

32. As a result of the conduct described above, Culpepper was a cause of Provectus' violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission annual reports on Form 10-K, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading.

33. As a result of the conduct described above, Culpepper was a cause of Provectus' violations of Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

34. As a result of the conduct described above, Culpepper was a cause of Provectus' violations of Section 13(b)(2)(B) of the Exchange Act, which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and are recorded as necessary to maintain accountability for assets, and that access to assets is permitted only in accordance with management's general or specific authorization.

35. As a result of the conduct described above, Culpepper willfully violated Rule 13b2-1 under the Exchange Act, which prohibits any person from directly or indirectly falsifying or causing to be falsified, any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

⁶ 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)).

E. FINDINGS

36. Based on the foregoing, the Commission finds that Culpepper (a) willfully violated Section 17(a)(3) of the Securities Act; (b) willfully violated Section 14(a) of the Exchange Act and Rules 13b2-1, 14a-3, and 14a-9 promulgated thereunder; and (c) caused Provectus' violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act, and Rules 12b-20, 13a-1, 14a-3, and 14a-9 promulgated thereunder.

F. UNDERTAKING

Respondent undertakes to pay Provectus, within 30 days of the entry of this Order, disgorgement of \$140,115 plus prejudgment interest of \$12,261, for a total payment of \$152,376.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Respondent Culpepper shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act and Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13b2-1, 14a-3, and 14a-9 thereunder.

B. Culpepper is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After three (3) years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Culpepper's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in

Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant. Such an application must satisfy the Commission that:
 - (a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that Respondent will not receive appropriate supervision;
 - (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
 - (d) Respondent acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

E. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$140,115, prejudgment interest of \$12,261, for a total payment of \$152,376, which payment shall be deemed satisfied by Respondent's payment of that amount to Provectus, as set forth in Respondent's undertaking above. If Respondent fails to make such payment to Provectus, then

Respondent will immediately pay \$152,376 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of the disgorgement and prejudgment interest is not made to the Commission, additional interest shall accrue thereon pursuant to SEC Rule of Practice 600. Payment to the Commission must be made in the same manner as set forth. In addition, within 30 days of the entry of this Order, Respondent shall pay a civil money penalty in the amount of \$90,535 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment of the civil money penalty is not made, additional interest shall accrue thereon 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 Peter R. Culpepper as the 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 Melissa Hodgman, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5521.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he 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 he 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.

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