UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4766 / September 11, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18168

In the Matter of

POTOMAC ASSET MANAGEMENT COMPANY, INC. and GOODLOE E. BYRON, JR.,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Potomac Asset Management Company, Inc. ("PAMCO") and Goodloe E. Byron, Jr. ("Byron") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V as to Byron, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds[1] that:

Summary

1. This matter involves violations by PAMCO, a registered investment adviser, and Byron, its principal, relating to the improper allocation of fees and expenses to two private equity fund clients, Potomac Energy Fund, L.P. ("Fund I") and Potomac Energy Fund II, L.P. ("Fund II") (collectively, "the Funds").

2. First, between 2012 and 2013, Respondents improperly charged $2.2 million in fees to Fund I for services provided by PAMCO affiliates to a portfolio company of Fund I. PAMCO was not authorized to charge these fees to Fund I and failed to disclose the use of fund assets to pay for such portfolio company fees to Fund I's limited partners. Moreover, after the portfolio company subsequently reimbursed the cost of the fees, PAMCO failed to offset the portfolio company fees against the management fees it charged to Fund I as required by Fund I's limited partnership agreement ("LPA"), which resulted in a larger advisory fee to PAMCO.

3. Second, between 2012 and 2015, Respondents improperly used the Funds' assets to pay PAMCO's adviser-related expenses, including to compensate a member of PAMCO's investment team, to pay rent and other expenses, and to pay costs associated with the firm's regulatory obligations. The use of the Funds' assets in this manner was neither authorized by nor disclosed in the Funds' governing documents. The Funds' audited financial statements also failed to disclose these payments as related party transactions. Because the Funds' audited financial statements did not reflect the related party relationships and material transactions, they were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). As a result, PAMCO, which had custody of client assets, was unable to rely on an exception to the custody rule.

4. Third, PAMCO also failed to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from the allocation of portfolio company fees and certain adviser-related expenses between PAMCO and the Funds.

5. Fourth, Byron, on behalf of the general partners of the Funds, failed to timely make certain capital contributions to the Funds as required by the terms of the Funds' LPAs. The failure to make these contributions was not adequately disclosed to the Funds' limited partners.

Respondents

6. **Potomac Asset Management Company, Inc.** is a Maryland corporation with its principal office in Frederick, Maryland. It has been registered with the Commission as an

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

investment adviser since 1981. PAMCO provides advisory services to pension and profit sharing plans and pooled investment vehicles. According to its most recent Form ADV, PAMCO had more than $114 million in regulatory assets under management.

7. **Goodloe E. Byron, Jr.**, age 63, resides in Middletown, Maryland. Byron is the President, founder and ultimate control person of PAMCO. Byron owns, controls and manages both Potomac Energy GP, LLC, the general partner to Fund I, and Potomac Energy GP II, LLC, the general partner to Fund II.

Other Relevant Entities

8. **Potomac Energy Fund, L.P.** ("Fund I") is a private equity fund, almost all of whose limited partners are joint labor-management administered pension funds organized under the provisions of the Taft-Hartley Act. The Fund's portfolio is comprised primarily of investments in the alternative energy, energy efficiency, infrastructure development and resource management sectors.

9. **Potomac Energy Fund II, L.P.** ("Fund II") is a private equity fund comprised of one limited partner, who also is an investor in Fund I. Fund II's portfolio similarly is comprised primarily of investments in the alternative energy, energy efficiency, infrastructure development and resource management sectors.

Facts

A. Background

10. PAMCO provides investment advisory and management services to Fund I and Fund II. Investments in the Funds are primarily governed by the Funds' respective limited partnership agreements and private placement memoranda ("PPM"), which Byron reviewed, approved and provided to the limited partners.

11. The Funds' LPAs provided terms for, among other things, the calculation and payment of capital contributions by the partners. Generally, partners of the Funds committed a specific amount of capital to either Fund I or Fund II pursuant to periodic capital calls by the general partner ("GP"), and a percentage of their commitment was invested in Fund portfolio companies. The LPAs required all partners to make their capital contribution payments by the due date in the capital call notice made by the GP.

12. The LPAs also set forth the amount and manner of management fees paid by the Funds to PAMCO, as well as the Funds' responsibility to pay organizational and partnership expenses. According to the LPAs, PAMCO was entitled to receive an annual management fee equal to 2% of committed capital, which was to be offset by a percentage of PAMCO's other income, including consulting and other fees received by PAMCO or its affiliates from portfolio companies. PAMCO bore responsibility for paying manager expenses, which were the costs and expenses of PAMCO for normal operating overhead of the adviser, including the compensation of PAMCO's employees, the cost of office rent related to PAMCO's business, and PAMCO's own regulatory expenses.

B. PAMCO's Improper Use of Fund Assets to Pay Portfolio Company Fees

13. The LPAs contemplated that PAMCO may provide services to portfolio companies held by the Funds in exchange for fees or other remuneration. Between 2012 and 2013, PAMCO provided services to a portfolio company of Fund I that generated $2.2 million in charges ("the Portfolio Company Fees"). Instead of charging the portfolio company directly, PAMCO, at Byron's direction, allocated to Fund I, and caused Fund I to pay, the Portfolio Company Fees.

14. Neither the LPA nor the PPM authorized PAMCO to charge the Portfolio Company Fees to Fund I. Moreover, Respondents did not disclose to Fund I's limited partners the misuse of fund assets, and Respondents could not effectively consent to this use of fund assets on behalf of Fund I because they were conflicted as the recipients of the Portfolio Company Fees. The portfolio company ultimately reimbursed the cost of the Portfolio Company Fees.

C. Failure to Offset Advisory Fees

15. Pursuant to the LPA, PAMCO was required to reduce the Fund I management fees by fifty percent (50%) of portfolio company remuneration, after adjusting for taxes and other costs. However, PAMCO did not offset its receipt of $2.2 million in Portfolio Company Fees against Fund I's management fee. As a result, PAMCO collected $726,000 more in management fees from Fund I than it was entitled to receive.

D. Improper Use of the Funds' Assets to Pay Adviser-Related Expenses

16. PAMCO, at Byron's direction, used the Funds' assets to pay various adviser-related expenses, including the following: (i) compensation to a member of PAMCO's investment team; (ii) office rent and other operational expenses; and (iii) certain costs Respondents incurred arising from an examination by the Commission's Office of Compliance Inspections and Examinations ("Commission Exam staff") and an investigation by the staff of the Commission's Division of Enforcement ("Commission Enforcement staff"). The use of the Funds' assets to pay for these expenses was not authorized by the Funds' governing documents or disclosed to the Funds' limited partners. Respondents could not effectively consent to this use of fund assets on behalf of the Funds because they were conflicted as the beneficiaries of the Funds' payments for adviser-related expenses.

17. The use of the Funds' assets to pay adviser-related expenses was contrary to Fund I's PPM dated May 2010 and later, and Fund II's PPM dated February 2013, which PAMCO provided to the limited partners and contained the following disclosure:

> In general, PAMCO shall bear compensation and expenses of its employees and fees and expenses for administrative, clerical and related support services, maintenance of books and records for the Fund, office space and facilities, utilities, and telephone insofar as they relate to the investment activities of the Fund. All other expenses will be borne by the Fund.

i. Compensation to Member of PAMCO Investment Team

18. In April 2011, PAMCO confirmed its arrangement with an individual ("Individual A") who had been working alongside other members of the PAMCO management team since January 1, 2011. Specifically, PAMCO provided Individual A with a letter confirming his "employment" with PAMCO, his title of "Principal" and the requirement that he perform a minimum of 35 hours of "consulting" per week to PAMCO. Internally, PAMCO did not record or otherwise identify Individual A as a salaried employee of PAMCO. Instead, PAMCO treated him as a third-party consultant. From 2012 to 2015, Individual A submitted fees and expenses to PAMCO on a monthly basis totaling $489,121, which PAMCO, at Byron's direction, in turn, allocated to the Funds, and caused the Funds to pay.

19. The vast majority of services Individual A provided, and the manner in which he provided them, were typical of the services advisory employees provide to private equity funds in exchange for a management fee. In various communications with the limited partners and others, including those contained in Fund II's February 2013 PPM, PAMCO not only represented Individual A to be a "Principal" of the adviser, but also a member of the adviser's "Investment Team." The investment team played a comprehensive role in creating and implementing PAMCO's investment strategy. Indeed, Individual A engaged in typical adviser activities, including attending investor meetings, communicating with investors, selecting investments, and working with the Funds' auditor and third-party administrator to prepare audited financial statements.

20. Moreover, Individual A's association with PAMCO did not have the characteristics of a third-party consultant relationship. He worked full-time in PAMCO's Frederick, Maryland office, was required to work a minimum of 35 hours per week, received health and other benefits from PAMCO, and performed the same or similar job functions as other members of PAMCO's investment team, including those who held the same title, and whose compensation was not charged to the Funds.

21. PAMCO was not authorized to charge Individual A's compensation and expenses to the Funds. Individual A was effectively an employee of PAMCO and provided the same advisory services as other employees whose compensation PAMCO paid out of the management fee.

ii. PAMCO's Rent and Other Operational Expenses

22. Between 2013 and 2014, PAMCO, at Byron's direction, allocated to the Funds, and caused the Funds to pay for, PAMCO's office rent and other operational expenses, totaling $212,252, despite language in the Funds' PPMs and LPAs that PAMCO was to bear these expenses.

iii. PAMCO's Regulatory Costs

23. The Funds' LPAs provided that the Funds would be responsible for the cost of legal and other professional services provided to the Funds in connection with the administration or operation of the Funds. In 2013, the Commission Exam staff conducted an examination of

PAMCO and, in January 2015, PAMCO received notice that the Commission Enforcement staff was conducting an investigation of, among other things, PAMCO's allocation of expenses to the Funds. PAMCO incurred expenses in connection with responding to the exam review and the enforcement investigation. PAMCO, at Byron's direction, allocated to the Funds, and caused the Funds to pay for, certain of these expenses, totaling $2,482.

24. Allocating these expenses to the Funds was improper since they arose from regulatory expenses incurred by PAMCO, the investment adviser (and not the Funds) and the Funds' governing documents did not otherwise authorize PAMCO to charge the Funds for its own regulatory costs.

25. Altogether, between 2012 and 2015, PAMCO improperly used the Funds' assets to pay $703,855 in adviser-related expenses.

E. Material Omissions in Forms ADV Concerning PAMCO's Compensation

26. PAMCO's Forms ADV Parts 1 and 2 for 2012 through 2014 did not disclose that PAMCO charged the Funds for the adviser-related expenses discussed above.

27. Item 5.E of Part 1 of Form ADV for 2012, 2013 and 2014 required that an investment adviser identify the ways it is compensated for providing advisory services. In response, PAMCO indicated only that it received a percentage of assets under management and performance-based fees. PAMCO did not disclose that, in addition to such amounts, the Funds paid a portion of PAMCO's operating expenses, which constituted compensation to the adviser, even though Item 5.E required an investment adviser to indicate whether it received "other" forms of compensation, and to specify the nature of that compensation.

28. Item 5.A of Part 2A of Form ADV for 2012, 2013 and 2014 required that an investment adviser describe in its brochure how the adviser is compensated for advisory services. With respect to the Funds, PAMCO indicated that it would receive "an annual fee equal to 2.0% of the total capital commitments of the partners." PAMCO did not disclose that, in addition to such amounts, the Funds paid a portion of PAMCO's operating expenses, which constituted compensation to the adviser.

29. Byron reviewed and ultimately approved PAMCO's Forms ADV and amendments thereto for years 2012, 2013 and 2014, which he caused to be filed with the Commission in order to maintain PAMCO's registration as an investment adviser.

F. Violation of the Custody Rule by Failing to Disclose Related Party Transactions in the Funds' Audited Financial Statements in Violation of GAAP

30. As a registered investment adviser with custody of client assets, PAMCO was required to comply with custody rule. PAMCO, as part of its reliance on the exception to the custody rule for an adviser to a pooled investment vehicle found in Advisers Act Rule 206(4)-2(b)(4), engaged a PCAOB registered auditor as the Funds' independent public accountant to audit their financial statements for the fiscal years ended December 31, 2011, 2012, 2013 and 2014. To comply with the custody rule, PAMCO needed to provide the Funds' limited partners with GAAP-

compliant financial statements within 120 days of the end of the fiscal year pursuant to the custody rule exception found in Advisers Act Rule 206(4)-2(b)(4).

31. GAAP provides disclosure requirements for related party relationships and transactions in financial statements. (*See*, generally, Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 850-10-50). PAMCO and the Funds were related parties because, for purposes of GAAP, Byron had common control over each entity since Byron formed and directed all investment activities and operating policies of each entity. Individual A was a related party of PAMCO and the Funds because he, too, was directly or indirectly under Byron's common control. (*See* ASC 850-10-20, *et seq*.) This common control allowed Byron to (i) pay PAMCO $2.2 million for the Portfolio Company Fees with Fund I's assets; and (ii) pay PAMCO $703,855 for adviser-related expenses, including Individual A's compensation, PAMCO's office rent and other operational costs, and PAMCO's own regulatory expenses. Fund I's payments to PAMCO for the Portfolio Company Fees and the Funds' payment of PAMCO's adviser-related expenses were material, related party transactions in fiscal years 2011 through 2014.

32. Fund I's audited financial statements for 2011 through 2014 and Fund II's audited financial statements for 2013 and 2014 were not in compliance with GAAP. The Funds' audited financial statements did not disclose (i) the nature of the related party relationship with Individual A, and (ii) the material related party transactions concerning PAMCO's receipt of $2.2 million in Portfolio Company Fees from Fund I and the Funds' payment of certain adviser-related operating expenses. In addition, the Funds' 2013 and 2014 audited financial statements violated the custody rule because they were significantly delayed and not distributed to the Funds' limited partners within 120 days of the end of the respective fiscal years as required under Rule 206(4)-2(b)(4).

33. Byron reviewed and ultimately approved the Funds' audited financial statements for 2011 through 2014. Byron signed the Funds' management representation letters to the Funds' auditor, which inaccurately stated that related party relationships and transactions had been properly recorded and disclosed in the financial statements.

34. The audit reports from the PCAOB-registered auditor attached to the financial statements for Fund I's fiscal year-ends 2011 through 2014 and Fund II's fiscal year-ends for 2013 and 2014 stated that the auditor had audited each financial statement in accordance with generally accepted auditing standards, and included unqualified opinions, in each year, that the financial statements were presented fairly in conformity with GAAP. This was inaccurate, as the audited financial statements were not GAAP compliant since they failed to disclose related party relationships and material related party transactions.

35. Because the audited financial statements were not GAAP compliant and, in certain instances, not distributed to the Funds' limited partners within 120 days of the end of the fiscal year, PAMCO, with substantial assistance from Byron, failed to meet the requirements for the exception to the custody rule found in Advisers Act Rule 206(4)-2(b)(4), for fiscal years 2011 through 2014.

G. Byron's Failure to Make Timely Capital Contributions to the Funds

36. As the owner and controlling person of the GPs of both Funds, Byron was obligated under the LPAs to make capital contributions on a timely basis to the Funds as follows:

> The General Partner or its Affiliate shall contribute in cash to the capital of the Partnership an amount equal to not less than one percent (1%) of the total amount contributed to the Partnership by all Partners (including the General Partner). Such amount shall be contributed at such times as the Capital Commitments of the Limited Partners are called for.

37. Byron failed to cause the GPs to timely contribute actual cash to the Funds, as required, in response to each capital call. Instead, Byron caused the Funds to record receivables for certain unpaid capital contributions.

38. Byron's failure to cause the GPs to contribute actual cash to the Funds on a timely basis was not adequately disclosed to the Funds' limited partners.

H. Failure to Adopt and Implement Reasonably Designed Compliance Policies and Procedures

39. From 2012 through 2014, PAMCO's compliance manual did not include policies and procedures to address allocations of expenses between PAMCO and the Funds, Byron's control of related parties, and how that control might affect related party transactions and required disclosures. In particular, the manual lacked specific provisions reasonably designed to prevent violations of the Advisers Act arising from failures to disclose material conflicts of interest or to act in the best interest of clients in connection with expense allocation and related party transactions involving PAMCO's private fund clients.

Violations

40. As a result of the conduct described above, Byron and PAMCO willfully[2] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

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[2] 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)).

41. As a result of the conduct described above, Byron and PAMCO willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder, which makes it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit 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" or "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

42. Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, the custody rule, impose specific requirements on registered advisers who have custody of client funds and securities. PAMCO had custody of client funds and securities within the meaning of the rule. Among other things, the custody rule generally requires that client assets be maintained with a qualified custodian, who must provide account statements to the investors at least quarterly, and requires client assets to be verified through an annual surprise examination by an independent public accountant. Rule 206(4)-2(b)(4) provides an exception to these requirements with respect to certain pooled investment vehicles. This exception, upon which PAMCO purported to rely, requires the vehicle to be audited by an independent public accountant, and requires GAAP-compliant audited financial statements to be distributed to investors within 120 days of the end of the vehicle's fiscal year. As a result of the conduct described above, PAMCO willfully violated, and Byron caused PAMCO's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-2.

43. As a result of the conduct described above, PAMCO willfully violated, and Byron caused PAMCO's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules.

44. As a result of the conduct described above, PAMCO willfully violated, and Byron caused PAMCO's violations of, Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein." Scienter is not required to establish liability under Section 207 of the Advisers Act; it merely requires willfulness. *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1309 (S.D. Fla. 2007).

PAMCO's Remedial Efforts

45. In determining to accept the Offer, the Commission considered remedial acts undertaken by PAMCO and cooperation afforded the Commission staff, including constituting a Limited Partner Advisory Board; hiring a new Chief Compliance Officer; engaging an independent compliance consultant to review and revise its compliance program and implementing the consultant's recommendations for enhancements to its policies and procedures concerning, among other things, conflicts of interest and the expense review and approval process for related party transactions; and voluntarily reimbursing the Funds, with interest, for the management fees it failed to offset and the expenses identified in this Order.

IV.

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

Accordingly, pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents PAMCO and Byron cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4) and 207 of the Advisers Act and Rules 206(4)-2, 206(4)-7 and 206(4)-8 promulgated thereunder.

B. Respondents PAMCO and Byron are censured.

C. Respondent Byron, jointly and severally with Respondent PAMCO, shall pay a civil money penalty in the amount of $300,000 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). Payment shall be made in the following installments: (i) $50,000 within 10 days of the entry of this Order; (ii) an additional $50,000 within 180 days of the entry of this Order; and (iii) an additional $200,000 within 360 days of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of the civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

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

(2) Respondents 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) Respondents 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 Potomac Asset Management Company, Inc. and Goodloe E. Byron, Jr. as a Respondents 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 Brendan P. McGlynn, Assistant Regional Director, Philadelphia Regional Office, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the 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 Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

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 Byron, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Byron 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 Byron 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