

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10539 / August 27, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83947 / August 27, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4996 / August 27, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33215 / August 27, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18681

In the Matter of

**AEGON USA INVESTMENT
MANAGEMENT, LLC,**

**TRANSAMERICA ASSET
MANAGEMENT, INC.,**

**TRANSAMERICA CAPITAL,
INC., AND**

**TRANSAMERICA
FINANCIAL ADVISORS,
INC.,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 15(b)
OF THE SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against AEGON USA Investment Management, LLC

(“AUIM”), Transamerica Asset Management, Inc. (“TAM”), Transamerica Capital, Inc. (“TCI”), and Transamerica Financial Advisors, Inc. (“TFA”) (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that

Summary

1. Between July 2011 and June 2015 (the “Relevant Period”), Respondents violated the federal securities laws and rules thereunder while offering, selling, and managing 15 quantitative-model-based mutual funds, variable life insurance investment portfolios, and variable annuity investment portfolios (each of which was a registered investment company and collectively are the “Products”) and separately managed account (“SMA”) strategies (the “Strategies”) (collectively, the “Products and Strategies”). Respondents marketed all of the Products and Strategies as “managed using a proprietary quant model,” and highlighted, when marketing certain of the Products and Strategies, their “emotionless,” “model-driven,” or “model-supported” investment management process and described how the models were supposed to operate. These claims necessarily implied that the models worked as intended. Respondents, however, launched the Products and Strategies without first confirming that the models worked as intended and/or without disclosing any recognized risks associated with using the models. During the summer of 2013, AUIM (the subadviser of the Products and Strategies) discovered that certain of the models contained errors and concluded that that these errors rendered at least one of the models “to not be fit for purpose.” AUIM stopped using, running, or relying on at least one of the models in September 2013. AUIM and TAM (the adviser of the Products) failed to disclose the

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

models' errors and AUIM's decision to stop using the model to the board of trustees of Transamerica Funds (the "Funds Boards"). Certain of the Respondents never publicly disclosed the discovery of errors or AUIM's decision to discontinue use of the model.

2. In addition, TAM and AUIM failed to disclose to investors and the Funds Board that an inexperienced quantitative research analyst (the "Analyst") was the day-to-day manager of certain of the Products. Instead, TAM and AUIM initially disclosed that a senior, experienced asset manager (the "Senior Manager") was the sole portfolio manager of these products and then later disclosed that other employees, as well as the Analyst, were these products' portfolio managers.

3. TAM and AUIM disclosed in filings with the Commission that the primary objective of one of the Products, the Transamerica Tactical Income Fund (the "TTI Fund"), was high current income, with a goal of a monthly dividend that was relatively consistent in amount, in the range of 4%-7%. TAM and AUIM disclosed that the dividend would be calculated based on estimates of expected dividends from the fund's holdings. Yet, TAM and AUIM failed to: (i) determine that the TTI Fund's holdings could support the disclosed dividend yield range; or (ii) calculate the dividend based on the disclosed methodology. Eighteen of the TTI Fund's first 22 monthly dividend payments were attributable, at least in part, to an estimated return of investors' capital, and eight of those payments actually included a return of capital.

4. In 2011, TAM and AUIM added volatility "guidelines" (the "Volatility Overlays") to the variable life insurance and variable annuity investment portfolios without disclosing to investors in those portfolios or the board of trustees of the Transamerica Series Trust (the "Trust Board") that these Volatility Overlays would control and determine the portfolios' asset allocations, and could, in certain market conditions, reduce their exposure to the equity markets below stated target percentages. TAM and AUIM did not take reasonable steps to check the accuracy of the Volatility Overlays. In the fall of 2013, after AUIM discovered and disclosed to TAM errors in the Volatility Overlays, TAM and AUIM failed to disclose those errors to investors in the portfolios or to the Trust Board.

5. TFA negligently relied upon and distributed to its advisory clients: (i) marketing materials stating that AUIM would achieve the Strategies' investment objectives by "using a quantitative econometric model to drive weekly allocations" without disclosing any risks related to the use of a model or verifying that the models worked as intended; and (ii) in connection with an additional set of SMA strategies managed by the unaffiliated investment adviser F-Squared Investments, Inc. ("F-Squared"), marketing materials, most notably an F-Squared-hosted web site, which contained a materially inflated, and hypothetical and back-tested, performance track record.

Respondents

6. **AEGON USA Investment Management, LLC ("AUIM")** (SEC File No. 801-60667) is registered with the Commission as an investment adviser and is headquartered in Cedar

Rapids, Iowa. AUIM is a wholly owned indirect subsidiary of Aegon N.V., a multinational insurance and asset management company headquartered in the Netherlands, and is an affiliate of TAM, TCI, and TFA. AUIM currently has more than \$106 billion in assets under management. AUIM acted as the sub-adviser of the Products and the “Model Manager” that developed, managed, and ran the models used with the Strategies. In its role as Model Manager, AUIM periodically sent the model output to TFA for use with the Strategies.

7. **Transamerica Asset Management, Inc. (“TAM”)** (SEC File No. 801-53319) is registered with the Commission as an investment adviser and is headquartered in Denver, Colorado. TAM is an indirect subsidiary of Aegon N.V. and an affiliate of AUIM and TCI. TAM currently has more than \$79 billion in assets under management. TAM acted as the adviser of the Products and hired AUIM to act as sub-adviser of the Products.

8. **Transamerica Capital, Inc. (“TCI”)** (SEC File No. 8-24829) is registered with the Commission as a broker-dealer and is headquartered in Denver, Colorado. TCI underwrites and distributes mutual funds and investment portfolios, including each of the Products at issue here. It is an indirect, wholly owned subsidiary of Aegon N.V. and an affiliate of TAM and AUIM.

9. **Transamerica Financial Advisors, Inc. (“TFA”)** (SEC File Nos. 801-38618; 8-33429) is dually registered with the Commission as an investment adviser and broker-dealer, is headquartered in St. Petersburg, Florida, and is an indirect subsidiary of Aegon N.V. and an affiliate of AUIM. TFA currently has more than \$969 million in assets under management. TFA sponsors the “Transamerica I-Series program,” a wrap fee program that enables its clients, through TFA investment adviser representatives, to invest in one or more investment strategies within separately managed accounts. TFA licensed and sold each of the Strategies at issue here, as well as investment strategies managed by F-Squared Investments, Inc. and other registered investment advisers.

Other Relevant Entities

10. **F-Squared Investments, Inc. (“F-Squared”)** (SEC File No. 801-69937) is an investment adviser that was registered with the Commission from March 2009 until January 2016, and was headquartered in Wellesley, Massachusetts. In October 2008, F-Squared launched its first AlphaSector index. F-Squared sub-licensed its approximately 75 AlphaSector indexes to unaffiliated third parties, including TFA, which managed assets pursuant to three of these indexes. On December 22, 2014, the Commission instituted a settled fraud action against F-Squared in which F-Squared admitted, among other things, making the materially false claims that: (i) the signals that formed the basis of the AlphaSector Premium index returns had been used to manage client assets from April 2001 to September 2008; and (ii) the signals resulted in a track record that significantly outperformed the S&P 500 Index from April 2001 to September 2008. *See In the Matter of F-Squared Investments, Inc.*, Admin. Proceeding No. 3-16325 (Dec. 22, 2014).

11. **Transamerica Funds** is registered with the Commission as an open-end management investment company and is organized as a Delaware statutory trust headquartered in Denver, Colorado.

12. **Transamerica Series Trust** is registered with the Commission as an open-end management investment company and is organized as a Delaware statutory trust headquartered in Denver, Colorado.

13. **The Products and Strategies:**

a. **Transamerica AEGON Active Asset Allocation – Conservative VP Portfolio (“AAA-Conservative Portfolio”)**, a series of Transamerica Series Trust and an open-end fund.² One of TFA’s SMAs, the Global Tactical Allocation – Conservative, strategy tracked the AAA-Conservative Portfolio.

b. **Transamerica AEGON Active Asset Allocation – Moderate VP Portfolio (“AAA- Moderate Portfolio”)**, a series of Transamerica Series Trust and an open-end fund. One of TFA’s SMAs, the Global Tactical Allocation – Moderate strategy, tracked the AAA-Moderate Portfolio.

c. **Transamerica AEGON Active Asset Allocation – Moderate Growth VP Portfolio (“AAA-Moderate Growth Portfolio”)**, a series of Transamerica Series Trust and an open-end fund. One of TFA’s SMAs, the Global Tactical Allocation – Moderate Growth strategy, tracked the AAA-Moderate Growth Portfolio.

d. **Transamerica Index 35 VP Portfolio (“Index 35 Portfolio”)**, a series of Transamerica Series Trust and an open-end fund. On May 1, 2013, the Index 35 Portfolio was renamed Transamerica Vanguard ETF Portfolio – Conservative VP Portfolio.

e. **Transamerica Index 50 VP Portfolio (“Index 50 Portfolio”)**, a series of Transamerica Series Trust and an open-end fund. On May 1, 2013, the Index 50 Portfolio was renamed Transamerica Vanguard ETF Portfolio – Balanced VP Portfolio.

f. **Transamerica Index 75 VP Portfolio (“Index 75 Portfolio”)**, a series of Transamerica Series Trust and an open-end fund. On May 1, 2013, the Index 75 Portfolio was renamed Transamerica Vanguard ETF Portfolio – Growth VP Portfolio.

g. **Transamerica Tactical Allocation Fund (“TTA Fund”)**, a series of Transamerica Funds and an open-end mutual fund. On May 1, 2015, the TTA Fund was renamed Transamerica Dynamic Allocation II Fund and its investment objectives, principal investment strategies, and subadviser, changed. Later in 2015, TTA was reorganized. One of TFA’s SMAs, the Global Tactical Allocation (“GTA”) strategy, initially tracked the AAA Portfolios. After the TTA Fund was launched, the GTA strategy was realigned to track the TTA Fund.

² Each of the AAA and Index Portfolios discussed herein was offered as an investment option available under variable life insurance policies and variable annuity contracts issued by select insurance companies.

h. **Transamerica Tactical Income Fund (“TTI Fund”)**, a series of Transamerica Funds and an open-end mutual fund. One of TFA’s SMAs, the Global Tactical Income strategy, tracked the TTI Fund.

i. **Transamerica Tactical Rotation Fund (“TTR Fund”)**, a series of Transamerica Funds and an open-end mutual fund. On May 1, 2015, the TTA Fund was renamed Transamerica Dynamic Allocation Fund, and its investment objectives, principal investment strategies, and subadviser changed. One of TFA’s SMAs, the Global Tactical Rotation strategy, tracked the TTR Fund.

Background

A. Respondents Marketed the Products and Strategies as “Model-Driven” and “Model Supported” Without Confirming That the Models Worked as Intended or Disclosing Risks

14. Starting in 2010, AUIM tasked the Analyst, who had recently earned his MBA, but had no experience in portfolio management or any formal training in financial modeling, with developing quantitative models for use in managing investment strategies (*i.e.*, models making investment allocation and models making trading decisions). AUIM ultimately used these models to manage each of the Products and Strategies. The Analyst did not follow any formal process to confirm the accuracy of his work, and AUIM failed to provide him meaningful guidance, training, or oversight as he developed the models or to confirm that the models worked as intended before using them to manage client assets.

15. AUIM identified potential risks associated with using models to manage third-party assets no later than 2011, but, by the fall of 2011, it had not reviewed its models for accuracy or formally validated them. By the fall of 2011, AUIM had launched ten of the Products and Strategies — all of the Index and AAA Portfolios and their related SMAs.

16. During the fall of 2011, an internal audit found that “AUIM does not have formal controls or policies and procedures to ensure quantitative model development is controlled and models function as expected.” It also concluded that AUIM “does not periodically perform independent validation of modeling results,” and therefore “transparency to modeling errors is potentially impaired and at worst may be concealed.” In response, two of AUIM’s senior managers informed the internal auditors that AUIM estimated it could resolve these concerns by March 31, 2012, and the company began taking steps to adopt and implement a formal validation process. AUIM continued to offer the Products and Strategies while the models remained unvalidated.

17. Additionally, after an AUIM risk department employee learned in the fall of 2011 that AUIM intended to launch a new product, the TTI Fund, before its model had been finalized and validated, he informed senior AUIM management in an email:

It doesn't seem like we've got the right chain of events to say we're going to launch a fund based on a new model . . . at the end of October; get documentation in place a bit afterwards; and ask for it to be reviewed later in November. I do appreciate the importance of getting products out there to start gathering assets. But we've all heard that model validation is an area where we need to do some serious catch-up. It seems like we're continuing to put the cart before the horse, though.

18. AUIM did not change plans for the TTI Fund launch in response to this email or inform TAM that it had not validated that the model worked as intended. AUIM conducted a high-level "peer review" of the model that would not be complete until after launch and that would not examine logic, methodology, or formulas as a full validation would. Within three days of the launch, preliminary findings from the peer review included the discovery of several glaring errors, such as the fact that the allocation weights did not add up to 100% as they should have. AUIM corrected those errors, but it did not subject the model to further scrutiny until the summer of 2013, when it began formal validation.

19. TFA, an investment adviser that selected AUIM to manage the Strategies, also recognized the risks associated with the "model-driven" Strategies. For example, TFA employees exchanged emails in May 2011 — before selecting AUIM to manage the Strategies — in which they discussed the risks associated with errors in the Analyst's models, noting that "we take the hit if he screws it up." Similarly, in August 2011 — when TFA clients began investing assets in earnest in the Strategies — TFA employees again discussed via email that "we run the risk of [the Analyst] making an error which is easy to do." TFA never disclosed these risks to its clients.

20. AUIM launched each of the Products and Strategies without taking steps to confirm that all of the models worked as intended. Indeed, AUIM did not create, adopt, or implement a written model validation policy until July 2013. Moreover, while AUIM's parent company had a policy in place requiring its subsidiaries, including AUIM, to test models before using them to manage assets, AUIM did not follow this policy.

21. TAM, TCI, and TFA understood that AUIM's models were used to manage each of the Products and Strategies and made affirmative statements to that effect without taking steps to confirm that AUIM had determined that its models worked as intended or disclosing recognized risks related to the use of such models. In particular, consistent with their respective understandings, Respondents drafted, approved, and used marketing materials that discussed the use of quantitative models in the Products and Strategies for "emotionless," "model-driven," or "model-supported" investment management that "eliminates emotional bias." Additionally, TAM informed the Funds Board, in connection with the approval of the TTI Fund, that allocation decisions for the fund would be made "as dictated by the model." TFA claimed in written marketing materials that the Strategies' investment objectives would be achieved "using a quantitative econometric model to drive weekly allocations." TCI (a broker-dealer that distributed

the Products) emphasized the use of models in its dealings with brokers, investment advisers, and other intermediaries when marketing the Products, stating, for example, that “[b]y using econometric modeling, the portfolio manager uses a 3-step process to identify proper allocations,” that “a quantitative strategy helps remove manager bias and limits the potential for human error,” and that the funds would “[u]tilize Econometric Modeling to identify credible signals from over 40 leading indicators.” TAM and TFA made such statements without a reasonable basis, and TAM, TCI, and TFA failed to disclose recognized risks associated with using the quantitative models, which rendered the statements misleading.

22. Additionally, the Analyst, who was not disclosed as a portfolio manager of the Products until March 2012, explained in a June 21, 2012 publicly-available podcast concerning the Products and Strategies:

I don't really manage the trades on a day-to-day basis or the allocations on a weekly basis, that's all handled by the model. It's totally unemotional. I have no, I don't even have override power but my job is to make sure the models are right, the assumptions are still valid, so, we'll constantly look at, look for new indicators, test them and see if we get a better outcome, and, of course, annually, we'll test all the indicators that are in the model to see if the level of accuracy that we are getting in the predictions is still, is still true, so, that is what I try to do.

23. In November 2012, AUIM launched two new Products: the TTA Fund and the TTR Fund. These funds incorporated versions of the TTI Fund's models. AUIM and TAM believed that these new funds would build upon the TTI Fund's popularity, as they, too, would address financial advisors' desire to “reduce or eliminate portfolio manager discretion.” Despite AUIM's initial estimate of a March 31, 2012 validation completion, AUIM still had not validated the models it used to manage asset allocations in the Products – including the TTI Fund's asset allocation model, which the Analyst described as the “engine” of these two new funds – before it launched the TTA and TTR Funds.

24. Though marketing materials emphasized the use of models, the Products' prospectuses did not reference models (or disclose any risks associated with the use of the models) until March 2014, after the discovery of significant errors in the models. This disconnect occurred in part because TAM drafted the prospectuses using a “library” of approved disclosures, the library did not contain any disclosures relating to the use of models, and no one at TAM considered whether a new disclosure regarding model use should be added to the library. The Strategies' marketing materials also never disclosed any risks associated with using models.³

³ Unlike the Products, the Strategies did not have prospectuses.

25. During the summer of 2013, AUIM determined that its allocation models used to manage the TTI Fund and AAA Portfolios contained material errors. For example, AUIM found that the TTI Fund asset allocation model contained “numerous errors in logic, methodology, and basic math” and concluded that these errors rendered it to “not be fit for purpose.” AUIM stopped using, running, or relying on the model to manage the TTI Fund in September 2013, and failed to disclose this decision or its discovery of these errors to the Funds Board, the Trust Board (collectively, the “Boards”), TAM, TCI, TFA, shareholders, and clients. Ultimately, more than 50 errors were discovered in AUIM’s quantitative models used to manage the Products and Strategies. Such errors included incorrect calculations, inconsistent formulas, and the use of whole numbers where percentages were intended (such as 1.77 instead of 1.77%). The errors impacted the models’ allocation outputs.

26. By early March of 2014, TAM and TCI learned that AUIM’s models contained errors and were no longer being used or were largely being ignored. However, neither TAM nor TCI disclosed these facts to investors. Further, TAM failed to disclose these facts to the Boards as a general matter and despite the Boards’ request in the spring of 2014 for such information during the information gathering process required by Section 15(c) of the Investment Company Act, when they were engaged in the adviser and sub-adviser contract renewal process.

27. Instead, in early March 2014, TAM revised the Products’ prospectuses to state, for the first time, that they “may” use a “proprietary quantitative model,” and TCI stopped using certain marketing materials, concluding that they did “not accurately reflect the current process being used to manage these funds.”

28. In May 2014, AUIM directed TFA to amend TFA’s description of AUIM’s investment process in its marketing materials by replacing the phrase, “using a quantitative econometric model,” as the marketing materials had disclosed since inception, with “using a combination of qualitative and quantitative factors.” TFA did not make inquiries in response to this change, however, and AUIM offered no explanation of why the change was necessary. As a result, TFA did not learn until August 2014 that AUIM had discovered errors in its models and was no longer using them or was largely ignoring them.

29. In May 2014, AUIM implemented a validated asset allocation model for the TTI Fund. In September 2014, AUIM implemented a validated asset allocation model for the TTA and TTR Funds. AUIM ultimately implemented validated asset allocation models for the AAA Portfolios in April 2015.

30. In March 2015, TAM recommended that the Boards approve TAM’s termination of the Investment Sub-Advisory Agreement with AUIM. The Boards accepted that recommendation, and AUIM’s Investment Sub-Advisory Agreement with respect to the Products was terminated on March 18, 2015 (effective May 1, 2015). TAM informed investors of the termination on March 18, 2015, but it did not disclose the discovery of errors, the change in investment management process, or the reason for the termination of AUIM’s Investment Sub-Advisory Agreement.

31. AUIM terminated its Model Manager Agreement with TFA on April 2, 2015 (effective May 29, 2015). TFA promptly advised its clients that it was no longer offering AUIM's Strategies, but it did not disclose the discovery of errors, the change in investment management process, or the reason that the AUIM-TFA agreement ended.

B. TAM and AUIM Failed to Disclose to Investors and the Funds Board the Analyst's Role in Managing the TTI Fund and the AAA Portfolios.

32. TAM and AUIM failed to disclose to investors in the TTI Fund and the AAA Portfolios and the Funds Board that the Analyst, who had no portfolio management experience, was responsible for the day-to-day management of these products at all times from May 2011 through his termination in August 2013. Instead, TAM and AUIM made inaccurate statements about the portfolio manager. Between May 2011 and March 2012, TAM and AUIM stated in the prospectuses for these products and in their marketing materials that the Senior Manager was the sole portfolio manager of these products. Between March 2012 and March 2013, TAM and AUIM disclosed the Senior Manager, as well as the Analyst and two other employees, as the named portfolio managers for these products. Finally, on March 31, 2013, AUIM removed the Senior Manager as a named portfolio manager for the products, but TAM and AUIM continued to disclose the Analyst and the two other employees as the named portfolio managers.

33. TAM approved disclosures reflecting AUIM's naming of the Senior Manager as the sole portfolio manager of these products (until March 2012) despite knowing, at least with regard to the TTI Fund, that "[the Analyst] selected the ETFs and is the sole architect of the quant model" and that "[the Analyst] doesn't have a backup right now."

34. The Analyst's involvement in the management of these products was so significant that internal auditors attributed "key person risk" to him since "AUIM cannot manage or maintain Passive and Tactical models in the event that [the Analyst] is unavailable." The Analyst also was involved in the marketing of these products, as, for example, he alone was interviewed by The Wall Street Journal and the Market Technicians Association regarding the TTI Fund. In contrast, the Senior Manager and the other two identified portfolio managers had virtually no knowledge of these products or role in their management or marketing.

35. The Senior Manager's knowledge, and involvement in the management, of these products was so limited that he was unable to confirm the accuracy of the investment process description in a draft 2011 prospectus for the AAA Portfolios. For example, he forwarded a request to approve the prospectus to another AUIM employee with the message, "Help." The AUIM employee responded, "I will have [the Analyst] check over the one paragraph that describes the asset allocation strategy" The Senior Manager also affirmatively refused to market the TTI Fund on at least one occasion because he "was not knowledgeable on the product."

36. Additionally, the Senior Manager did not know that TAM and AUIM intended to disclose him as the sole portfolio manager of the TTI Fund until after the Funds Board had approved the fund. The Funds Board's approval was based, in part, on its comfort with the Senior Manager's involvement. When the Senior Manager learned of his designation, he objected and asked to be removed from all disclosures and marketing materials regarding the TTI Fund, but AUIM's Chief Investment Officer declined to do so.

37. The other two named portfolio managers also lacked fundamental knowledge and meaningful roles in the management of these products. For instance, TAM issued a report after a June 2013 "due diligence" visit in which it observed that "[the Analyst] is currently operating on an island" and observed that two other individuals "are listed as Portfolio Managers but do not have any day-to-day involvement in the portfolio" and "seem to have zero impact on any of the quant strategies." TAM took no action in response to these observations and did not relay them to the Boards. Further, AUIM, in July 2013, devised a "strategy to get [these two individuals] acquainted with the portfolios for mock and potentially real SEC examination" but took no steps to change any disclosures concerning the named portfolio managers of these products.

C. The TTI Fund Included an Undisclosed Return of Capital in its Dividend Payments.

38. TAM and AUIM disclosed in filings with the Commission that the TTI Fund's primary objective was high current income, with a goal of a monthly dividend that was "relatively consistent in amount," in the range of 4%-7%. They further disclosed that "[t]he dividend will be calculated based on estimates of expected dividends from the fund's holdings." They also informed the TCI wholesalers who marketed the fund that they projected it to pay a monthly dividend yield of "4.5% to 6.5%," and that the monthly dividend stream would be "handled by using a dividend smoothing algorithm with a quarterly true-up."

39. While from November 2011 through August 2013, the TTI Fund did pay out purported "dividends" within the 4% to 7% range, for 18 of those 22 months TAM and AUIM included short-term capital gains in those dividend calculations, causing the dividends to include an estimated return of capital. For 17 of those dividends, TAM and AUIM did not send investors required notices under Section 19(a) of the Investment Company Act specifying that the payments included estimated return of capital. Additionally, eight of those dividends, all paid in 2013, did in fact include a return of capital. This occurred for two reasons. First, TAM and AUIM did not complete the "dividend smoothing algorithm." Second, until the fall of 2013, AUIM lacked sufficient controls to determine that any particular asset would be held through its "ex-dividend" date and therefore could not accurately predict expected dividends of fund holdings. In June 2013, TAM issued an internal report noting this failure and the conclusion that therefore "income expectations of the tactical income fund were a bit exaggerated."

40. In June of 2013, TAM and AUIM told the TCI wholesalers to inform financial advisers of the return of capital and lowered the distribution yield of the fund by "setting the distribution policy more directly to what the underlying ETFs are generating," which they expected to be around 3-4% prospectively.

D. TAM and AUIM Added Volatility Overlays to the Index and AAA Portfolios Without Adequate Disclosure and Without First Confirming the Overlays' Accuracy.

41. In 2011, at TAM's direction, AUIM added Volatility Overlays to the Index Portfolios and also launched the AAA Portfolios with these Volatility Overlays. The Index and AAA Portfolios were offered through variable annuity contracts and variable universal life insurance policies that provided purchasers a rider option with guaranteed minimum withdrawal benefits. Purchasers could choose among a list of investment options for this rider, some of which provided the opportunity, at an additional cost, to increase their benefits above the guaranteed minimum. The Index and AAA Portfolios were among these options; they purported to offer greater exposure to the equities markets and therefore the potential for greater appreciation during market upswings.

42. The Index Portfolios historically targeted a stated equity concentration over time that was reflected in each portfolio's name. For instance, the Index 35 Portfolio targeted a mix over time of approximately 35% equity concentration, and the portfolio's equity exposure over time was to remain within 4% of that target (*i.e.*, 31% to 39%). In September 2010, TAM proposed expanding the equity concentration range to 18% of the target (*i.e.*, 15% to 51% for the Index 35 Fund) and using the Volatility Overlays to limit equity exposure in times of greater volatility, thus reducing the chance that the portfolios would lose money and require the insurance company to use its own assets to pay guaranteed benefits. The change would limit losses in periods when the prices of equities were dropping. Yet, certain investors purchased rider options with guaranteed minimum withdrawal benefits to obtain greater appreciation during rising equity markets, and this change also would limit such potential appreciation. The Trust Board approved TAM's proposals, and AUIM implemented them on May 1, 2011.

43. TAM disclosed the use of the Volatility Overlays in the Index Portfolios' May 1, 2011 prospectuses, but it did not disclose associated risks or explain that the Volatility Overlays were controls that would dictate the portfolios' asset allocations in certain markets, instead referring to them as "guidelines."

44. Though TAM and AUIM applied the same Volatility Overlays to both the Index Portfolios and the AAA Portfolios, TAM did not disclose in the AAA Portfolios' initial May 1, 2011 prospectuses that they were also subject to the Volatility Overlays. TAM did not disclose the application of these Volatility Overlays to the AAA Portfolios until their April 26, 2012 prospectuses.

45. AUIM notified TAM in 2012 that it believed the Volatility Overlays were dampening the Index and AAA Portfolios' equity exposure below the portfolios' equity targets. AUIM also questioned whether the Index and AAA Portfolios' prospectuses misled investors by calling the Volatility Overlays "guidelines." Nonetheless, the prospectuses continued to refer to the Volatility Overlays as "guidelines."

46. In June 2012, certain insurance companies notified TAM that they intended to cease offering the Index and AAA Portfolios at the end of the year because the products were no longer profitable. In the summer of 2012, TAM approached AUIM about modifying the Volatility Overlays so that insurance companies would continue to offer these portfolios. AUIM developed the requested modifications but informed TAM that, although the back-tests showed a potential benefit to some investors, the modified Volatility Overlays could also result in average equity exposures below the long-term targets stated in the prospectuses. For example, AUIM predicted that the Index 75 Fund would see average equity exposures of 59.08% compared to the stated target of 75%.

47. In October 2012, TAM recommended that the Trust Board adopt the modified Volatility Overlays for most of the Index and AAA Portfolios. TAM warned that “[t]he proposed modifications may cause the [Portfolios’] equity allocation to deviate from the established benchmarks,” but advised that the modified Volatility Overlays provide “a significant benefit to the shareholder.” While the modified Volatility Overlays may have provided downside protection to shareholders by reducing equity exposure, that reduced equity exposure was not what shareholders reasonably would have expected based on the Index and AAA Portfolios’ disclosures, and that reduced equity exposure diminished shareholder returns in up markets. The Trust Board followed TAM’s recommendation. The modified Volatility Overlays were implemented on December 10, 2012.

48. In January 2013, TAM recommended that the Trust Board change the names of the Index Portfolios to eliminate the equity percentage numbers because, among other things, the current “name of these [Portfolios] may cause confusion to investors.” The Index Portfolios were renamed effective May 1, 2013, but TAM did not disclose the reason for the name change.

49. In October 2013, AUIM reviewed the modified Volatility Overlays and discovered errors in their back-tests and implementation. AUIM informed TAM of its discovery shortly after it identified the errors. AUIM then began correctly implementing the modified Volatility Overlays starting in late October 2013. AUIM shared its conclusions and analysis with TAM, but neither AUIM nor TAM disclosed the information to investors or the Boards.

E. TFA Negligently Relied Upon and Distributed to Its Advisory Clients Marketing Materials Regarding AUIM’s Use of Econometric Models and F-Squared’s Materially Inflated, and Hypothetical and Back-tested, Performance Track Record.

50. From mid-2011 to 2015, TFA offered strategies managed by AUIM and F-Squared through its wrap fee program without having in place or implementing written compliance policies and procedures reasonably designed to determine it had a reasonable basis for its public disclosures regarding these strategies.

51. These deficiencies contributed to TFA’s failings regarding AUIM’s strategies as discussed in paragraphs 19, 21, 28, and 31*supra*. Additionally, in part because of these same failings, TFA contracted with F-Squared in December 2010 and ultimately offered three F-

Squared-managed SMA investment strategies between June 2011 and October 12, 2015: (1) the AlphaSector Rotation strategy (offered beginning mid-June 2011), (2) the AlphaSector Rotation Premium strategy (offered beginning late February 2012), and (3) the AlphaSector World Allocator Premium strategy (offered beginning late December 2012).

52. In addition, TFA relied on F-Squared's marketing efforts, including allowing F-Squared to create a dedicated website for TFA and to communicate directly with TFA's investment adviser representatives and advisory clients. F-Squared falsely marketed the strategies using hypothetical historical performance that it described as "not backtested" and based on an actual strategy used to manage live assets. In embracing F-Squared's marketing efforts, TFA violated its own compliance policies and procedures, including, specifically, those regarding the use of internet web sites and third party advertising.

53. With regard to F-Squared's performance claims concerning the period April 2001 to September 2008, TFA also relied solely on documents and information that came directly or indirectly from F-Squared while it was aware or should have been aware of risks associated with using this information. While TFA did review performance returns calculated by a third-party, the input data that that third-party used to calculate the returns also came from F-Squared. Having taken insufficient steps to confirm the accuracy of F-Squared's performance data and not having obtained sufficient documentation that would have substantiated F-Squared's advertised performance and performance-related claims in the F-Squared advertising materials distributed by TFA, TFA failed to have a reasonable basis to believe that F-Squared's performance was accurate when it distributed advertisements to clients considering F-Squared's strategies.

54. Additionally, TFA did not reasonably respond to concerns that arose concerning F-Squared between October 2013 and July 2015. For example, during the spring of 2014, TFA learned that the Investment Company Institute had published an article claiming that F-Squared "clearly overstated" past returns in its marketing materials. In response, TFA requested that F-Squared "provide the corrected back tested monthly returns for the period April 2001 – September 2008," but it took no action when F-Squared replied that it could not because "1/1/03 is the first date we had the information we needed to run the back test."

Violations

55. As a result of the conduct described above, AUIM and TCI willfully⁴ violated Section 17(a)(2) of the Securities Act, which prohibits any person, in the offer or sale of securities, from obtaining money or property by means of any untrue statement of material fact

⁴ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

or any omission to state a material fact necessary in order to make statements made not misleading. Proof of scienter is not required to establish a violation of Section 17(a)(2) of the Securities Act; negligence is sufficient. *Aaron v. SEC*, 446 U.S. 680 (1980); *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453-54 (3d Cir. 1997)

56. As a result of the conduct described above, AUIM and TAM willfully violated Section 15(c) of the Investment Company Act, which requires an investment adviser (and, in this case, also the sub-adviser) to a registered investment company, such as a mutual fund, “to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby [it] undertakes regularly to serve or act as investment adviser . . .” to the fund.

57. As a result of the conduct described above, AUIM, TAM, and TFA willfully violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple 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, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

58. As a result of the conduct described above, AUIM and TFA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, which makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Advisers Act to, among other things, directly or indirectly publish, circulate or distribute an advertisement which contains any untrue statement of material fact, or which is otherwise false or misleading. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

59. As a result of the conduct described above, AUIM, TAM, and TFA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

60. As a result of the conduct described above, AUIM and TAM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, or otherwise 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. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

61. As a result of the conduct described above, TFA willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(16) thereunder. Section 204(a) of the Advisers Act requires investment advisers to make and keep certain records as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2 under the Advisers Act requires investment advisers registered or required to be registered to make and keep true, accurate and current various books and records relating to their investment advisory business, including all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser publishes, circulates, or distributes, directly or indirectly, to ten or more persons. Proof of scienter is not required to establish a violation of Section 204 of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

Respondents' Cooperation and Remedial Efforts

62. In determining to accept the Offers, the Commission considered the substantial cooperation afforded the Commission staff. Respondents cooperated with the Commission's investigation throughout its entirety, and their efforts assisted the Commission staff in its collection of evidence, including information that might not otherwise have been available to the staff.

63. In 2016, after the start of the Commission's investigation, Respondents voluntarily retained a compliance consultant (the "Consultant") to conduct a comprehensive, independent review related to their respective compliance policies and procedures, internal controls and related practices, with an emphasis on product development, use of investment models and algorithms, due diligence, disclosures in prospectuses and marketing materials, and enterprise compliance functions and the operation of those controls within and among the Respondents. Respondents received the Consultant's written findings and implemented the Consultant's proposed changes. Respondents have retained the Consultant for further reviews through the Consultant's completion of the follow-up review for fiscal year 2019.

64. In addition, in advance of receiving the Consultant's recommendations, Respondents began revising and improving their compliance and due diligence policies and procedures related to the use of models and the creation and use of marketing communications, product development, and investment management.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, Sections 203(e) and 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. AUIM shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1(a)(5), 206(4)-7, and 206(4)-8 promulgated thereunder, and Section 15(c) of the Investment Company Act.

B. TAM shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 promulgated thereunder, and Section 15(c) of the Investment Company Act.

C. TCI shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

D. TFA shall cease and desist from committing or causing any violations and any future violations of Sections 204, 206(2) and 206(4) of the Advisers Act and Rules 204-2(a)(16), 206(4)-1(a)(5), and 206(4)-7 promulgated thereunder.

E. Respondents are censured.

F. Respondents shall pay disgorgement, prejudgment interest, and civil monetary penalties totaling \$97,602,040 as follows:

- i. AUIM shall pay disgorgement of \$24,599,896, prejudgment interest of \$3,682,195, and a civil monetary penalty of \$21,000,000, consistent with the provisions of this Subsection F.
- ii. TAM shall pay disgorgement of \$15,000,000, prejudgment interest of \$2,235,765, and a civil monetary penalty of \$10,500,000, consistent with the provisions of Subsection F.
- iii. TCI shall pay disgorgement of \$12,000,000, prejudgment interest of \$1,826,022, and a civil monetary penalty of \$4,000,000, consistent with the provisions of Subsection F.
- iv. TFA shall pay disgorgement of \$1,700,000, prejudgment interest of \$258,162, and a civil monetary penalty of \$800,000, consistent with the provisions of Subsection F.
- v. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund for distribution to account holders who purchased or held an

interest in any of the Products and Strategies or F-Squared strategies during the Relevant Period (each, an “affected investor”) is created for the \$97,602,040 in disgorgement, prejudgment interest, and penalties paid by Respondents as described above, as well as any penalties paid by Bradley J. Beman and Kevin A. Giles, within 30 days of the entry of the orders in the parallel proceedings, *In the Matter of Bradley J. Beman*, Admin. Proc. File No. 3-18682 and *In the Matter of Kevin A. Giles*, Admin. Proc. File No. 3-18683. 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.

- vi. Within ten (10) days of issuance of this Order, Respondents shall deposit \$97,602,040 of the disgorgement, prejudgment interest, and civil monetary penalties (the “Fair Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.
- vii. Respondents shall be responsible for administering the Fair Fund and may hire a professional to assist them in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- viii. Respondents shall pay from the Fair Fund to each affected investor an amount representing the *pro-rata* fees and commissions paid by the affected investor during the Relevant Period pursuant to a disbursement

calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection F. No portion of the Fair Fund shall be paid to any affected investor account in which any Respondents or any of their current or former officers or directors have a financial interest.

- ix. Respondents shall, within ninety (90) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondents, along with any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondents shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondents’ proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondents are notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection F.
- x. After the Calculation has been approved by the Commission staff, Respondents shall submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, and (3) the amount of any *de minimis* threshold to be applied.
- xi. Respondents shall complete the disbursement of all amounts payable to affected investor accounts within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph xv of this Subsection F.
- xii. If Respondents are unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor account or any factors beyond Respondents’ control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934,

pursuant to the instructions set forth in Subsection G, below, when the distribution of the funds is complete and before the final accounting provided for in Paragraph xii of this Subsection F is submitted to Commission staff.

- xiii. A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondents shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- xiv. Within 150 days after Respondents complete the distribution of all amounts payable to affected investors, Respondents shall return all undistributed funds to the Commission pursuant to the instructions set forth in Subsection G, below. The Respondents shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondents have made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies AUIM, TAM, TCI and TFA as Respondents in these proceedings and the file number of these proceedings to Paul A. Montoya, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- xv. The Commission staff may extend any of the procedural dates set forth in Paragraphs vi through xiv of this Subsection F for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar

days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

G. Payments ordered pursuant to Subsections F.xii and/or F.xiv 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 each Respondent 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 Paul A. Montoya, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

By the Commission.

Brent J. Fields
Secretary