

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84118 / September 13, 2018**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5008 / September 13, 2018**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3970 / September 13, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18762**

**In the Matter of**

**HOLTHOUSE CARLIN &  
VAN TRIGT LLP**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 203(k) OF  
THE INVESTMENT ADVISERS ACT OF  
1940, 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 and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Holthouse Carlin & Van Trigt LLP (“HCVT” or “Respondent”) pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> Section 4C(a)(2) provides, in relevant part, that:

The Commission may censure any person . . . if that person is found . . . to have engaged in unethical or improper professional conduct.

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may censure a person . . . who is found . . . to have engaged in unethical or improper professional conduct.

## 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, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, 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 (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>3</sup> that:

### Summary

This proceeding arises out of HCVT’s failure to comply with the Commission’s auditor independence rules. From 2012 through 2016, HCVT conducted 57 audits for the private funds of four registered investment adviser clients pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the “Custody Rule”). In 2012 and 2013, HCVT also conducted six audits for four broker-dealer clients. The Commission’s independence standards under Rules 2-01(b) and (c) of Regulation S-X apply to Custody Rule audits under Rule 206(4)-2(d)(3) of the Advisers Act, and to broker-dealer audits under Rule 17a-5(f)(3) of the Exchange Act.<sup>4</sup> HCVT, however, violated those independence standards because it prepared and audited its clients’ financial statements, accompanying notes, and accounting entries. As a result of its conduct, HCVT caused its investment advisers clients’ violations of Section 206(4) of the Advisers Act and Rule 206(4)-2, caused its broker-dealer clients’ violations of Section 17(a) of the Exchange Act and Rule 17a-5, violated Rule 17a-5(i) of the Exchange Act, and engaged in improper professional conduct under Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

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<sup>3</sup> 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.

<sup>4</sup> The provisions of Exchange Act Rule 17a-5 relevant here have since changed. On July 30, 2013, the Commission adopted amendments to Rule 17a-5. *See Broker-Dealer Reports*, SEC Exch. Act Rel. No. 34-70073 (July 30, 2013), 78 Fed. Reg. 51910 (Aug. 21, 2013). Among other things, the amendments require audits of brokers and dealers for fiscal years ending on or after June 1, 2014 to be performed in accordance with the Public Company Accounting Oversight Board (“PCAOB”) standards, not “generally accepted auditing standards,” or “GAAS,” as the rule previously required. Although the amended language reflects the change to PCAOB auditing standards, this change does not otherwise affect an auditor’s liability for inaccurately stating in an auditor’s report that its audit was performed in accordance with applicable standards under Rule 17a-5(i). Additionally, the auditor independence requirement of Rule 2-01 of Regulation S-X applied to broker-dealer audits both before and after the July 30, 2013 amendments. At the time of the relevant conduct, prior to the amendments, that requirement was set forth in Rule 17a-5(f)(3). It is now found in Rule 17a-5(f)(1).

## Respondent

**Holthouse, Carlin & Van Trigt LLP** is a California limited liability partnership. It is a regional CPA firm with its principal place of business in Los Angeles. HCVT has more than 100 partners and principals and over 585 employees with 12 offices located in California, Texas, and Utah. HCVT is registered with the Public Company Accounting Oversight Board (“PCAOB”). Currently, it’s PCAOB registration is pending withdrawal. HCVT also has no disciplinary history.

## Facts

### **A. Background**

1. HCVT primarily provides tax, accounting, business management, and mergers and acquisitions services to private companies, public companies, and high net worth individuals and family offices. It also provides auditing services to privately held businesses, funds, and employee benefit plans. HCVT does not audit any public issuers.

2. In 2009, HCVT expanded its practice to include audits for four broker-dealers registered with the Commission. Its practice expanded further in 2012, when, pursuant to the Custody Rule, HCVT began auditing private investment funds managed by registered investment advisers. From 2012 to 2016, HCVT’s Custody Rule and broker-dealer audits generated just 0.32% of its total revenues.

### **B. HCVT’s Custody Rule Audits**

3. HCVT failed to comply with Regulation S-X’s independence standards when it conducted 57 audits for four investment adviser clients for audit years 2012 through 2016.

4. Those four adviser clients had custody of the assets of several private investment funds they advised. Thus, each client was required to comply with the Custody Rule’s independent asset verification requirement, either through a surprise asset verification of client funds and securities in the adviser’s custody or a scheduled annual audit of each fund’s financial statements. In each instance here, the advisers engaged HCVT to perform annual audits for their respective private investment funds.

5. The Custody Rule requires auditors to comply with the independence standards of Regulation S-X, Rules 2-01(b) and (c). Under these rules, an accountant is not independent if the accountant provides certain bookkeeping or other services related to the accounting records or financial statements unless it is reasonable to conclude that the results of those services will not be subject to audit procedures during the audit of the audit client’s financial statements.

6. HCVT’s policies, procedures, controls, and training incorrectly referenced the independence standards issued by the American Institute of Certified Public Accountants (“AICPA”), which allow auditors to prepare their clients’ financial statements and still maintain their independence so long as the client assumes responsibility for the financial statements. They

did not refer to Regulation S-X's independence standards or make clear that those standards governed Custody Rule audits.

7. HCVT also incorrectly concluded that the AICPA's independence standards governed the 57 Custody Rule audits. In fact, no one at HCVT took any steps to determine which independence standards applied to Custody Rule audits, and no one involved with these audits raised auditor independence as an issue.

8. Five of the 57 Custody Rule audits at issue took place in audit years 2012 through 2016, and were for a private investment fund managed by an investment adviser registered with the Commission.

9. In each of those five audits, HCVT prepared the fund's financial statements and notes. As part of its preparation of the client financial statements, HCVT converted them from cash to GAAP basis and created journal entries that ultimately formed the basis of the final financial statements that HCVT subsequently audited. As a result, HCVT's revisions to the fund's financial statements substantially changed the fund's net income as previously accounted for under a cash basis, for instance, increasing it by more than 100% in 2012 and decreasing it by 50% in 2013. HCVT's workpapers for these audits nonetheless certified that HCVT was independent.

10. The other 52 Custody Rule audits at issue were for three other investment adviser clients' private investment funds – 50 were audits for one adviser's funds in audit years 2012 through 2016, and two were audits for two other advisers' funds in audit year 2016.

11. HCVT also prepared all of the funds' financial statements and notes for these 52 audits. To do so, HCVT drafted the financial statements after it received trial balance sheets and income statements. HCVT also proposed accounting adjustments and provided proposed financial disclosures, and the firm also helped update the notes to the financial statements.

### **C. HCVT's Broker-Dealer Audits**

12. HCVT also failed to follow Regulation S-X's independence standards when it conducted six audits for four broker-dealer clients in audit years 2012 and 2013.

13. Similar to the Custody Rule, Section 17(a) and Rule 17a-5 of the Exchange Act require auditors to comply with the independence standards of Rules 2-01(b) and (c) of Regulation S-X when auditing broker-dealer financial statements.

14. HCVT made significant adjustments and edits to the clients' financial statements and notes in five of the six audits, supplemented one note and added a new note to the financial statements to one audit, and used its own software to prepare the financial statements and notes for all six audits.

15. The HCVT audit reports for each audit were filed by the clients with the Commission in a Form X-17A-5-Part III. Each report stated that the audit was conducted "in

accordance with auditing standards generally accepted in the United States of America” and contained HCVT’s unqualified opinion on the broker-dealer’s financial statements.

16. HCVT, however, audited the financial statements and notes it helped prepare. In doing so, no one at the firm considered that the Commission’s independence standards in Regulation S-X do not allow auditors to audit their own work. Indeed, none of HCVT’s policies, procedures, controls, and training referenced Regulation S-X’s independence standards, and no one raised independence standards as being an issue for these audits.

17. For five of the six audits at issue, three broker-dealer clients generated and gave HCVT draft financial statements and notes. HCVT made significant adjustments to the financial statements and notes in four of the five audits. HCVT also used its word processing software to prepare the financial statements and notes it was auditing. After doing so, HCVT provided the financial statements and notes it had prepared to its clients for approval. In one instance, HCVT made direct adjustments to the client’s fiscal year 2012 financial statements and notes to the financial statements.

18. The sixth audit was for one broker-dealer client in audit year 2012. For this audit, the client prepared a version of the financial statements and notes and provided it to HCVT. HCVT supplemented one of the notes to the financial statements by adding information concerning broker-dealer customer concentrations and added a new note to the financial statements concerning subsequent events. HCVT also prepared the final version of the financial statements and notes using its own word processing software before sending the final version to the client for approval.

## **Violations**

### **A. Custody Rule Violations**

19. Section 206(4) of the Advisers Act and Rule 206(4)-2 requires investment advisers to maintain client assets with a qualified custodian. Rule 206(4)-2(a)(4) requires client assets to be verified through an annual surprise examination by an independent public accountant. Rule 206(4)-2(b)(4) states that an investment adviser with custody of a private fund client’s assets does not have to be subjected to surprise exams if its fund’s financial statements are audited and provided to the limited partners, often referred to as the “audit exception.” Rule 206(4)-2(d)(3) requires auditors to comply with the independence standards of Regulation S-X, Rules 2-01(b) and (c).

20. Rule 2-01(b) of Regulation S-X provides that an auditor lacks independence if it is not “capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.” Rule 2-01(c)(4) of Regulation S-X provides that an auditor also lacks independence if, at any point during the audit and professional engagement period, the auditor provides prohibited non-audit services to an audit client.

21. As a result of the conduct described above, HCVT caused four of its investment adviser clients to violate the Custody Rule (Section 206(4) of the Advisers Act and Rule 206(4)-2) when HCVT failed to maintain its independence under Rule 2-01(b) and (c) of Regulation S-X, as

required by Rule 206(4)-2(d)(3), while conducting 57 audits of the financial statements of those clients' funds from 2012 to 2016.

## **B. Broker-Dealer Violations**

22. Section 17(a) of the Exchange Act and Rule 17a-5 require registered broker-dealers to file annual reports with the Commission containing financial statements audited by independent public accountants. As in effect at the relevant time, Rule 17a-5(e)(1)(i) stated: "An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this section ...." Rule 17a-5(f)(3) provided that "[a]n accountant shall be independent in accordance with the provisions of Rule 2-01(b) and (c) of Regulation S-X."

23. Rule 2-01(b) of Regulation S-X provides that an auditor lacks independence if it is not "capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement." Rule 2-01(c)(4) of Regulation S-X provides that an auditor also lacks independence if, at any point during the audit and professional engagement period, the auditor provides prohibited non-audit services to an audit client.

24. As in effect that the time, Rule 17a-5(g) of the Exchange Act required that "[t]he audit shall be made in accordance with generally accepted auditing standards," or "GAAS." GAAS states "...it is the responsibility of the auditor to ensure compliance with all relevant legal, regulatory, or professional obligations." AU-C Section 200.02.<sup>5</sup> The ethical requirements, including objectivity and independence, consist of the "AICPA Code of Professional Conduct together with rules of state boards of accountancy and applicable regulatory agencies that are more restrictive." AU-C 200.A15-.A16.

25. Rule 17a-5(i) of the Exchange Act required broker-dealer auditors to state in their audit reports "whether the audit was made in accordance with [GAAS]." Accordingly, if an auditor's report states that its audit was performed in accordance with GAAS when the auditor was not independent, then it has directly violated Exchange Act Rule 17a-5(i). *See In the Matter of Rosenberg Rich Baker Berman & Company and Brian Zucker, CPA*, Exch. Act Rel. No. 69765 at p. 5 (June 14, 2013) (settled order).

26. As a result of the conduct described above, HCVT caused four of its broker-dealer clients to violate Section 17(a) and Rule 17a-5 of the Exchange Act when HCVT failed to maintain its independence under Rule 2-01(b) and (c) of Regulation S-X, as required by Rule 17a-5(f)(3) of the Exchange Act, while conducting six audits of those clients' financial statements in 2012 and 2013.

27. As a result of the conduct described above, HCVT violated Exchange Act Rule 17a-5(i) by representing in its audit reports filed with the Commission that it had performed the audits of its broker-dealer clients' financial statements in accordance with GAAS when in fact,

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<sup>5</sup> The AICPA clarified its standards for audits of financial statements for periods ending on or after December 15, 2012. For periods prior, see AU Section 220.05, "The Securities and Exchange Commission (SEC) has also adopted requirements for independence of auditors who report on financial statements filed with it that differ from the AICPA requirements in certain respects."

because of the independence impairment described above, the audits had not been performed in accordance with GAAS.

**C. Rule 102(e)**

28. Rule 102(e)(1) of the Commission's Rules of Practice and Section 4C of the Exchange Act allows the Commission to censure a person if the Commission finds the person engaged in improper professional conduct. *See* Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

29. Rule 102(e)(1)(iv) and Section 4C(b) define "improper professional conduct" to include one of two types of negligent conduct: a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances for which heightened scrutiny is warranted; or repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. Questions regarding an auditor's independence always warrant heightened scrutiny. *See Amendment to Rule 102(e) of the Commission's Rules of Practice*, 63 Fed. Reg. 57164, 57168 (Oct. 26, 1998).

30. As a result of the conduct described above, HCVT engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) when it repeatedly failed to exercise due professional care by not complying with Commission independence standards.

**Findings**

31. Based on the foregoing, the Commission finds that HCVT caused four of its investment adviser clients' violations of Section 206(4) of the Advisers Act and Rule 206(4)-2.

32. Based on the foregoing, the Commission finds that HCVT caused four of its broker-dealer clients' violations of Section 17(a) and Rule 17a-5 of the Exchange Act.

33. Based on the foregoing, the Commission finds that HCVT violated Rule 17a-5(i) of the Exchange Act.

34. Based on the foregoing, the Commission finds that HCVT engaged in improper professional conduct within the meaning of Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

**Undertakings**

35. HCVT has undertaken to forego and end any engagements concerning Custody Rule audits, broker-dealer audits, public company audits, or any other assurance service arising from a Commission rule for a period of one year from the date of entry of this Order. A Custody Rule audit is defined as an engagement to audit the financial statements of a private fund managed by a registered investment adviser pursuant to Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-2. A broker-dealer audit is defined as an engagement to audit the financial

statements of a broker-dealer pursuant to Section 17(a) and Rule 17a-5 of the Securities Exchange Act of 1934. A public company audit is defined as an engagement to audit the financial statements of an “issuer” as that term is defined in Section 3(a)(8) of the Securities Exchange Act of 1934.

36. If HCVT chooses to engage in Custody Rule audits, broker-dealer audits, public company audits, or any other assurance service arising from a Commission rule after the one year period referenced in paragraph 35 above, HCVT undertakes that, before it enters into such engagements, it must (1) retain, at HCVT’s expense, an independent consultant not unacceptable to the Commission’s staff (the “Independent Consultant”) for a period of three years and (2) certify, in the manner described in paragraph 44 below, that is in compliance with the Independent Consultant’s recommendations. HCVT shall require the Independent Consultant to:

- a. conduct a comprehensive review of HCVT’s policies, procedures, controls, and training on auditor independence standards for Custody Rule audits, broker-dealer audits, public company audits, or any other assurance service arising from a Commission rule (collectively the “Policies & Practices”);
- b. make recommendations for changes or improvements to the Policies & Practices and a procedure for implementing the recommended changes or improvements; and
- c. conduct an annual review, for each of the following three years from the date of the issuance of the Independent Consultant’s initial report, to assess whether HCVT is complying with its revised Policies & Practices and whether the revised Policies & Practices are effective in achieving their stated purposes, and make additional recommendations for changes or improvements to the Policies & Practices, if needed.

37. HCVT undertakes that no later than ten days following the date of the Independent Consultant’s engagement, provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant’s responsibilities pursuant to paragraph 36 above. HCVT shall not have the authority to terminate the Independent Consultant without prior written approval of the Commission’s staff.

38. HCVT undertakes that it will arrange for the Independent Consultant to issue its first report within 90 days after the date of the Independent Consultant’s engagement. For the annual reviews conducted for each of the following three years, HCVT undertakes that it will arrange for the Independent Consultant to issue each of these reports 365 days following the preceding report. Within ten days after the issuance of each of the reports, HCVT shall require the Independent Consultant to submit to Robert Conrard, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071 a copy of the Independent Consultant’s reports. The Independent Consultant’s reports shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the Policies & Practices adequate and address the deficiencies set forth in Section III of the Order.

39. Within 30 days of receipt of each of the Independent Consultant's reports, HCVT undertakes that it will adopt all recommendations contained in the reports and remedy any deficiencies in its written policies, procedures, and systems; provided, however, that as to any recommendation that HCVT believes is unnecessary or inappropriate, HCVT may, within 15 days of receipt of the reports, advise the Independent Consultant in writing of any recommendations that it considers to be unnecessary or inappropriate and propose in writing an alternative policy or procedure designed to achieve the same objective or purpose.

40. With respect to any recommendation with which HCVT and the Independent Consultant do not agree, HCVT undertakes that it will attempt in good faith to reach an agreement with the Independent Consultant within 30 days of receipt of the reports. In the event that HCVT and the Independent Consultant are unable to agree on an alternative proposal acceptable to the Commission's staff, HCVT will abide by the original recommendation of the Independent Consultant.

41. Within 30 days after the date of each of the Independent Consultant's reports, HCVT undertakes that it will submit an affidavit to the Robert Conrad, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA 90071 stating that it has implemented any and all recommendations of the Independent Consultant, or explaining the circumstances under which it has not implemented such recommendations.

42. HCVT undertakes that it will cooperate fully with the Independent Consultant and provide the Independent Consultant with access to its files, books, records and personnel as reasonably requested for the Independent Consultant's review.

43. HCVT undertakes that it will require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with HCVT, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Los Angeles Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Sagent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

44. HCVT undertakes that it will certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Robert Conrad, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los

Angeles, CA 90071, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2, and Section 17(a) of the Exchange Act and Rule 17a-5.

B. Respondent is censured.

E. Respondent shall comply with the undertakings enumerated in Section III., Paragraphs 35 through 44.

G. Respondent shall, within 30 days of the entry of this Order, 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

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

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

Payments by check or money order must be accompanied by a cover letter identifying HCVT 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 John W. Berry, Associate Regional

Director, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower St., Suite 900, Los Angeles, CA 90071.

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

By the Commission.

Brent J. Fields  
Secretary