

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

**SECURITIES ACT OF 1933**  
**Release No. 10706 / September 27, 2019**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 87134 / September 27, 2019**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4095 / September 27, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19541**

**In the Matter of**

**FCA US LLC and**  
**FIAT CHRYSLER**  
**AUTOMOBILES N.V.**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against FCA US LLC and Fiat Chrysler Automobiles N.V. (“FCA US” and “FCA N.V.” respectively, and 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 Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings pursuant to Section 8A of the Securities Act of 1933 and Section

21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### Summary

1. From at least August 2012 to July 2016, FCA US, an automotive company, fraudulently misled investors about the number of new vehicles that it and its dealers sold each month to customers. Beginning in September 2013, FCA US or its predecessor also falsely touted that it continued to increase new vehicle sales every month on a year-over-year basis by reporting what it called a “streak” of uninterrupted sales growth. FCA US issued monthly press releases falsely reporting its new vehicle sales and growth streak. FCA US and its parent company, FCA N.V., attached the monthly press releases to reports that were filed with or furnished to the Commission.

2. FCA US, based in Auburn Hills, Michigan, sells vehicles in the U.S. primarily under the Chrysler, Dodge, Jeep, and Ram brands. FCA US sells vehicles both to dealers and, in limited numbers, directly to customers. FCA US has nine regional offices, called Business Centers, that work with dealers in their respective regions to sell vehicles. In their monthly press releases, Respondents reported “new vehicle sales,” which included sales to customers directly and through dealers.

3. New vehicle sales and the growth streak were key performance indicators that were important to Respondents, investors, and analysts. FCA N.V. explained to investors in annual reports that new vehicle sales illustrated the company’s competitive position and demand for its vehicles. Vehicle sales in the U.S. accounted for close to half of FCA N.V.’s worldwide sales. In an article posted on its website, FCA US described the sales streak as “a symbol of our continuing success in the marketplace.”

4. FCA US inflated monthly vehicle sales to customers by paying dealers to report fake sales, which were later “unwound” or reversed. In addition, FCA US Business Center employees reported fake vehicle sales.

5. Further, FCA US failed to report all actual sales in the months in which they were made. Instead, FCA US maintained a database of actual but unreported sales. FCA employees often referred to the database as a “cookie jar.” In months when it wanted its vehicle sales results to appear better than they were, FCA US dipped into the “cookie jar” to inflate vehicle sales numbers. In particular, FCA US manipulated vehicle sales to avoid ending the growth streak.

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<sup>1</sup> 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.

FCA US falsely reported year-over-year sales growth in September 2013 and May 2016, when in fact, sales in those months declined as compared to sales in the same months of the preceding years. FCA US also inflated results before investor events that were held while FCA N.V. was preparing to list shares on the New York Stock Exchange (“NYSE”). As a result of these practices, FCA US’s reported sales and year-over-year growth percentages were misstated every month during the relevant period.

6. On multiple occasions from 2013 through 2015, dealers and employees informed FCA US of fake sales reporting at its Business Centers. Nevertheless, FCA US continued to falsely report sales through mid-2016. Moreover, after a dealer filed a lawsuit in January 2016 alleging that FCA US offered to pay the dealer to report fake sales, FCA N.V. publicly denied the allegations.

7. In their books and records, Respondents inaccurately recorded FCA US’s payments to dealers to report fake sales as advertising expenses. Moreover, Respondents’ books and records did not accurately reflect the number of vehicles sold by FCA US in a particular month because FCA US used the database where it stored actual but unreported sales. Respondents also failed to have a sufficient system of internal accounting controls relating to how new vehicle sales and dealer payments were recorded.

8. Accordingly, Respondents violated the antifraud provisions of the Securities Act and the Exchange Act as well as the reporting, books and records, and internal accounting controls provisions of the Exchange Act. Specifically, FCA US violated Section 17(a) of the Securities Act and Sections 10(b), 15(d), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, and 15d-11 thereunder. FCA N.V. violated Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, and 13a-16 thereunder.

### **Respondents**

9. FCA US, a subsidiary of FCA N.V., is a Delaware limited liability company headquartered in Auburn Hills, Michigan. It designs, manufactures and sells vehicles. FCA US was previously known as Chrysler Group LLC. Fiat S.p.A. (“Fiat”), FCA N.V.’s predecessor, first acquired an ownership stake in FCA US in 2009. By January 2014, Fiat acquired a 100 percent equity interest in FCA US. On February 25, 2011, to satisfy a contractual obligation to the U.S. Department of the Treasury to make periodic reports to the Commission, FCA US registered its Class B Membership Interests under Section 12(g) of the Exchange Act. Subsequently, FCA US registered an offering of senior notes with the Commission on Form S-4, as amended, under the Securities Act, which was effective April 4, 2014. FCA US filed periodic reports, including on Forms 10-K and 10-Q, with the Commission from 2011 until December 2015. Between April 4, 2014 and December 31, 2014, FCA US’s periodic reports were filed pursuant to an obligation under Section 15(d) of the Exchange Act and related rules thereunder as a result of the Securities Act registration described above.

10. FCA N.V., the parent company of FCA US, is a Dutch public company headquartered in London, United Kingdom. FCA N.V.’s common stock is registered with the

Commission pursuant to Section 12(b) of the Exchange Act. Since October 2014, FCA N.V.'s common stock has traded on the NYSE under the ticker symbol FCAU. Between December 2014 and December 2016, its mandatory convertible securities were registered with the Commission and they traded on the NYSE under the ticker symbol FCAM. FCA N.V. files with the Commission annual reports on Forms 20-F and furnishes Forms 6-K pursuant to Section 13(a) of the Exchange Act and related rules thereunder. During the relevant period, FCA N.V. registered the following offerings with the Commission on: Form F-4, as amended, which was effective July 8, 2014 (under the name of Fiat Investments N.V., which was subsequently renamed FCA N.V. in October 2014); Form S-8, which was effective October 17, 2014; Form F-1, as amended, which was effective December 10, 2014; Form S-8, which was effective January 12, 2015; and Form F-4, which was effective June 16, 2015.

## **Facts**

### **Vehicle Sales Results Reported Monthly**

11. FCA US issued monthly press releases reporting sales of new vehicles in the United States. FCA US's publicly reported sales included vehicles sold by FCA US to customers directly and through dealers. FCA US or FCA N.V. usually attached these press releases to reports on Form 8-K filed with the Commission or reports on Form 6-K furnished to the Commission.<sup>2</sup>

12. In each monthly press release, FCA US provided the total number of vehicles purportedly sold to customers that month, as well as total sales by brand and by model, and compared these results to those of the same month of the preceding year. Month after month, FCA US publicly touted the number of consecutive months in which its total sales grew on a year-over-year basis – what it referred to as the “streak.” The streak purportedly reached 75 months by mid-2016.

13. The press releases and reports failed to alert investors that the monthly sales results included fake vehicle sales and sales from prior months drawn from the database.<sup>3</sup>

### **Vehicle Sales Results Were Important to Respondents, Investors, and Analysts**

14. New vehicle sales and the growth streak were key performance indicators that were important to Respondents, investors, and analysts. Investors and analysts followed the monthly vehicle sales results and considered them a factor in evaluating the company's health.

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<sup>2</sup> From August 1, 2012 through September 3, 2014, FCA US issued monthly new vehicle sales press releases and filed with the Commission on Forms 8-K either the entire press releases or tables with new vehicle sales results. From December 2, 2014 through June 1, 2016, FCA US issued monthly new vehicle sales press releases, which FCA N.V. furnished to the Commission on Forms 6-K. FCA US's September 2014, October 2014, and June 2016 new vehicle sales results were distributed by press releases only.

<sup>3</sup> FCA US's and FCA N.V.'s revenues were not impacted by the reporting of fake sales or sales from prior months drawn from the database.

15. Each month, Bloomberg published a Wall Street & Analyst Consensus that presented analyst estimates of U.S. vehicle sales year-over-year growth or decline for several companies, including FCA US. Also each month, analysts published reports on the U.S. vehicle sales achieved by the industry and its major players, including FCA US.

16. Respondents acknowledged the importance of these metrics in Commission filings and other public statements. For example, in annual reports, FCA N.V. explained that new vehicle sales were illustrative of its competitive position and the demand for its vehicles. In 2015, vehicle sales in the U.S. accounted for 48 percent of FCA N.V.'s worldwide sales.

17. Accordingly, the Respondents' then-CEO touted the uninterrupted year-over-year growth streak describing it in January 2016 as "not an inconsequential feat" and a result of customers valuing the FCA brand. In an article posted on its website, FCA US described the sales streak as "a symbol of our continuing success in the marketplace."

18. FCA US distributed the monthly press releases to analysts and journalists. FCA US worked to ensure broad media coverage of the vehicle sales results and tried to secure advantageous headlines. For example, FCA US was pleased with influencing a headline concerning its July 2012 sales, "Chrysler Sales Rise 13% to Extend 28-Month Streak of U.S. Gains."

19. Every month, FCA US's vehicle sales results were covered extensively by the media. The media's coverage frequently referred to the streak describing it as "a stunning record," "jaw-dropping," and "incredible." The media reported analysts commenting that the growth streak was "virtually unheard of for American auto manufacturers" and that "FCA accomplished something that nobody would have predicted a few years ago – to have five-plus years of sales increases – even in an accelerating market [is] an impressive feat and reflects very well on the [CEO]."

20. FCA US's monthly vehicle sales results impacted FCA N.V.'s share price. For example, a global investment bank emailed an FCA N.V. executive noting the positive impact that FCA US's November 2014 sales results had on FCA N.V.'s stock price. The email observed that FCA US's vehicle sales results had exceeded analyst estimates and outpaced key competitors' year-over-year results. Similarly, FCA N.V.'s Head of Investor Relations informed FCA N.V. executives that "FCA shares opened the month [of June 2016] trading higher . . . due to an increase in U.S. sales in May relative to sales decline by its Detroit peers and the industry."

### **FCA US Business Centers Reported Fake Sales**

21. FCA US had nine regional Business Centers—California, Denver, Mid Atlantic, Great Lakes, Midwest, Northeast, Southeast, Southwest and West—that were responsible for sales in various parts of the country. Business Center employees worked with local dealers to help generate sales. Each Business Center was led by a Director, who reported to FCA US's Head of Sales.

22. FCA US put pressure on the Business Centers to increase sales, maintain the year-over-year sales streak, and hit internal sales targets, particularly on the last sales day of the month.

In response to the pressure, certain employees at most of the Business Centers engaged in fake sales reporting.

23. Business Center employees asked dealers to report fake sales in a FCA US database, often in exchange for the payment of money. As described below, cooperative marketing funds were used to pay dealers for reporting fake sales and disguise the payments.

24. In addition, Business Center employees reported fake sales in the database and falsely coded them as sales to dealers, sales to fictitious customers, or as stock reductions. Legitimate dealer stock reductions were generally for lost, stolen, or destroyed vehicles, not for vehicles that were available for sale on dealer lots. As a result, FCA US's database contained false vehicle sales entries, including false customer names and dates of sales.

25. FCA US included the fake sales in its publicly reported vehicle sales results. Subsequently, these sales were often reversed in the FCA US database, which consequently made these vehicles available for sale to a future, real customer. In some cases, FCA US's dealers subsequently sold vehicles that had been previously inaccurately reported as sold to real customers without the prior sales report being reversed, simply by changing the phony customer name and address to the real customer's name and address in the database. FCA US did not publicly report the later real sales and thus, did not double count vehicles sold.

26. Several Business Center Directors knew about or directed the fake sales reporting. For example, one Business Center Director personally asked dealers to report fake sales, directed others to ask dealers to report fake sales, and directed improper stock reductions in various months between July 2012 and the summer of 2015. In December 2014, another Business Center Director approved paying dealers to report fake sales. On the last sales day of June 2015, another Business Center Director approved paying a dealer for fake sales. That same day, a Director of a different Business Center emailed another Business Center Director that "[e]veryone will hit [their targets] but they are going to have to get dirty."

27. FCA US had programs in place where marketing expenses that met certain criteria could be shared between FCA US and its dealers. These programs were known as "cooperative marketing" programs. FCA US improperly used cooperative marketing funds to make payments to dealers for reporting fake sales. The payments to dealers were falsely recorded in Respondents' books and records as advertising expenses.

28. Respondents did not have a sufficient system of internal accounting controls over payments made from cooperative marketing funds. Respondents did not have adequate written policies, procedures, or training relating to these payments. Even though FCA US required advanced approval of cooperative marketing programs, FCA US made payments for purported marketing that had not been approved. FCA US also required the submission of documentation from dealers showing the funds had been used for marketing prior to making payments. However, FCA US made payments without obtaining the required documentation. For example, in one Business Center, 47 out of 50 sampled payments totaling \$705,000 were made without obtaining supporting documentation.

29. On a number of occasions from 2013 through 2015, FCA US was informed by its employees and dealers of fake sales reporting at its Business Centers.

30. For instance, in January 2013, a dealer told a Business Center Director (who later that year became an executive at FCA US's headquarters), that the prior Director of that Business Center had paid the dealer for reporting fake sales.

31. In November 2014, a dealer informed a Director of a different Business Center that his Business Center was reporting vehicles sold that the dealer had not actually sold. The Business Center employee who had entered the fake sales continued to report fake sales repeatedly, including in 2016.

32. Also in November 2014, FCA US completed an internal audit that found deficiencies in the stock reduction process at a third Business Center and raised concerns about phantom sales, reputational risks, and potential litigation exposure. The audit found that this Business Center had entered a large number of stock reductions on the last sales days of October 2013 and December 2013.

33. In January 2015, FCA US received an ethics hotline complaint from an employee of a fourth Business Center who stated that a manager instructed the employee to offer dealers marketing funds to report fake sales. The employee also complained that Business Center employees falsely reported as sold vehicles that were still in dealer inventory. Later in 2015, FCA US received additional internal complaints about fake sales reporting.

34. Following the January 2015 ethics hotline report, FCA US launched an internal investigation, which over time expanded to include other complaints made by Business Center employees and dealers. Notwithstanding all of the foregoing complaints and the internal investigation, FCA US continued to report fake sales.

35. On January 12, 2016, a dealer sued FCA US alleging that Business Center employees asked dealers to falsify sales in exchange for marketing payments. On January 14, 2016, after the lawsuit was widely reported in the media, the trading of FCA N.V.'s stock was halted in Italy. FCA N.V.'s NYSE listed stock price decreased by as much as 6.7 percent. On January 14, 2016, FCA N.V. issued two press releases denying the lawsuit's allegations.

#### **FCA US Used a Database to Hold Certain Vehicle Sales for Reporting in Future Months**

36. Under the direction of the Head of U.S. Sales, FCA US also used a database of fleet and certain other retail sales ("fleet database") to misreport vehicle sales results and year-over-year growth percentages every month. Fleet customers included rental car companies and other entities. In months when FCA US had enough vehicle sales to continue the growth streak or hit other targets, some sales were not publicly reported and instead were held in the fleet database for public reporting in future months. FCA US employees referred to the vehicle sales saved for public reporting in future months as the "cookie jar," the "bank," the "bag," and the "kitty."

37. In months when the growth streak would have ended or when FCA US fell short of other targets, vehicle sales stored in the fleet database were taken out and reported as if they had just occurred, making that month's results appear better than they were.

38. On October 1, 2013, FCA US issued a press release falsely reporting that in September 2013 it had "U.S. sales of 143,017 units, a 1 percent increase compared with sales in September 2012." In order to continue the streak, FCA US included in these September 2013 results about 7,000 vehicles from the fleet database that had been sold in prior months. FCA US also included in these vehicle sales results about 1,000 vehicles on dealers' lots that had not yet been sold to customers by dealers. The inclusion of these 8,000 vehicles artificially inflated the reported sales for that month and turned what would have been a decrease in year-over-year sales into a fictitious increase. It also enabled FCA US to falsely claim in the press release that September 2013 was the "42<sup>nd</sup>-consecutive month of year-over-year sales gains." The media amplified this claim with headlines such as, "Chrysler Reports Surprise 0.7% Sales Gain to Extend U.S. Streak." FCA US falsely touted that this growth streak continued for another two and a half years, when the growth streak had been broken in September 2013.

39. On June 1, 2016, FCA US issued a press release falsely reporting for May 2016 "U.S. sales of 204,452 units, a 1 percent increase compared with sales in May 2015." FCA US included in the May 2016 vehicle sales results around 12,000 vehicles from the fleet database that had been sold in prior months. This inflated the vehicle sales results for that month and turned what would have been a decrease in year-over-year sales into an increase. News articles inaccurately noted that the streak reached 74 months. An analyst also unwittingly commented that "[t]he streak lives . . . FCA continues to push for consecutive [year-over-year] sales gains (74 months of consecutive [year-over-year] sales gains.)" A few days later, FCA N.V.'s Head of Investor Relations stated that FCA N.V.'s shares were trading higher at the beginning of June "due to an increase in U.S. sales in May relative to sales decline by [the company's] Detroit peers and the industry."

40. Further, FCA US inflated its April 2014 new vehicle sales in order to show better results ahead of May 2014 investor day events, which were being held while FCA N.V. was preparing to list its shares on the NYSE. During the investor day events held on May 6 and 7, 2014, FCA N.V. falsely represented that it had achieved 48 consecutive months of year-over-year sales gains in the U.S. when, in fact, the growth streak would have been broken in September 2013 had FCA US not included sales from the fleet database.

41. FCA US also altered the vehicle sales results for particular models and brands, which were included in its monthly press releases and filings, especially when a year-over-year sales decline could be turned into an increase or a sales record or milestone could be reported, or to show steady sales growth for new models.

42. By using the fleet database, Respondents' books and records did not accurately reflect the number of vehicles sold by FCA US in a particular month. The Respondents did not have a sufficient system of internal accounting controls to provide reasonable assurances that FCA US recorded new vehicle sales in the months in which they were actually sold.

43. After Commission staff began an investigation of false vehicle sales reporting, FCA US disclosed to the staff that the company had used the fleet database to misreport vehicle sales.

44. On July 26, 2016, FCA US announced improvements to how it reported new vehicle sales and reported historical new vehicle sales using the new methodology.

### **Violations**

45. As a result of the conduct described above, Respondents violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of any securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

46. Also as a result of the conduct described above, FCA US violated Section 15(d) of the Exchange Act and Rules 15d-11 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 15 of the Exchange Act to file with the Commission accurate information, documents, and reports as the Commission may require, including current reports on Form 8-K, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading.

47. As a result of the conduct described above, FCA N.V. violated Section 13(a) of the Exchange Act and Rules 13a-16 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate information, documents, and reports as the Commission may require, including furnishing to the Commission reports of foreign private issuers on Form 6-K, and mandate that the reports contain such further material information as may be necessary to make the required statements not misleading.

48. In addition, as a result of the conduct described above, Respondents violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

49. Furthermore, Respondents violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent FCA US cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 15(d), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, and 15d-11 thereunder.

B. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent FCA N.V. cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, and 13a-16 thereunder.

C. Respondents shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$40 million, on a joint and several basis, to the Securities and Exchange Commission. 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) 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 FCA US and FCA N.V. as 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 Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph C above. Regardless of whether any such Fair Fund distribution is made, 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 these proceedings. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any 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 these proceedings.

By the Commission.

Vanessa A. Countryman  
Secretary