UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85867 / May 15, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19167

In the Matter of **WILSON-DAVIS & CO., INC.** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Wilson-Davis & Co., Inc. ("Wilson" or "Respondent").

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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 that:

Summary

From at least January 2013 through July 2017 (the "relevant period"), Respondent, a registered broker-dealer, failed to file Suspicious Activity Reports ("SARs") when it knew, suspected, or had reason to suspect that certain penny stock transactions it executed on behalf of its customers involved the use of its firm to facilitate fraudulent activity or had no business or apparent lawful purpose. During the relevant period, Wilson ignored numerous red flags listed in its AML policies, failed to properly investigate certain conduct, and ultimately failed to file SARs on the suspicious activity.

Numerous transactions by Wilson customers raised red flags that indicated potential market manipulation or pump-and-dump activity in low-priced securities. All of these transactions involved the deposit of physical certificates, the liquidation of the securities, and the immediate wiring of funds out of the customer's account—activity identified as a red flag of suspicious activity in Wilson's own AML policies. Many of these transactions raised additional red flags that should have heightened Wilson's suspicions. Nonetheless, Wilson failed to either identify or to investigate these red flags, despite the fact that its written AML procedures identified such activity as indicators of potential money laundering, and required their further investigation for the possible filing of a SAR.

By failing to file SARs as required, Wilson willfully[1] violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Respondent

1. Wilson is a registered broker-dealer located and organized in Utah. It has satellite offices in Colorado, Florida, Arizona, New Jersey, New York, and California. It has been registered with the Commission since 1968, has approximately 7,000-8,000 active customer accounts, and has approximately thirty-two registered representatives. Wilson's primary business is the liquidation of microcap stocks and is a market-maker in approximately fifty securities.

Facts

Background

Wilson's AML Compliance Program

2. Wilson's AML Compliance Department has two employees. One of the two, Wilson's President, AML officer and Chief Compliance Officer, is responsible for vetting all stock deposits for registration (or an appropriate exemption) before the stock is sold, responding to regulatory requests, and conducting internal AML investigations.

[1] 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)).

3. Wilson's Written Supervisory Procedures ("WSPs") contain Wilson's AML policies and procedures.

4. Wilson believed the improper sale of unregistered securities to be a primary and significant AML risk. To prevent the improper sale of unregistered securities, Wilson created what it characterized to be a robust securities vetting program. The vetting process is intended to verify that the physical penny stock certificates deposited at the firm are either registered or appropriately exempt from registration, and Wilson requires that the customer provide documentation regarding the ownership history and background of the shares. Once Wilson clears the certificates for deposit, it believes the customer is free to liquidate the shares and wire funds to their own bank account largely without further inquiry for AML purposes.

5. Wilson conducts certain automated AML surveillance programs, such as its red flag report, which reviews for duplicate names, addresses, tax identification number and phone numbers. This red flag report identifies whether individuals are associated with other accounts at the firm. Wilson also conducts a daily wash trade and matched trade report. These reports were not designed to detect certain red flags included in Wilson's WSPs, including those at issue in this action.

6. Wilson's WSPs also require all employees to promptly report to Wilson's AML officer, any known or suspected money laundering or other financial violations of anti-money laundering policies as well as other suspected violations or crimes. Employee reporting was the only method used to detect many of the red flags listed in the WSPs.

7. To help employees detect suspicious activity, Wilson's AML policies and procedures specifically identify various red flags or risk indicators that may suggest suspicious activity, including fraud. Many of Wilson's AML red flags are also described as red flags in industry notices issued by FINRA. These specific AML red flags include the following:

- The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations;
- The customer engages in suspicious activity involving the practice of depositing penny stocks, liquidates them, and wires the proceeds. A request to liquidate shares may also represent engaging in an unregistered distribution of penny stocks which may also be a red flag;
- For no apparent business reason or other reason, the customer has multiple accounts under a single name or multiple names (including family members or corporate entities);
- Two or more accounts trade an illiquid stock suddenly and simultaneously;
- The customer has opened multiple accounts with the same beneficial owners or controlling parties for no apparent business reason;
- Customer transactions include a pattern of receiving stock in physical form or the incoming transfer of shares, selling the position and wiring the proceeds.

Wilson's WSPs specifically address additional red flags from transactions involving penny stock:

- Officers or insiders of the issuer are associated with multiple penny stock issuers;
- Officers or insiders of the issuer have a history of securities violations;
- Customer deposits the certificate with a request to journal the shares to multiple accounts, or to sell or otherwise transfer ownership of the shares;
- Law enforcement subpoenas.

8. Once an employee makes Wilson's AML officer aware of a red flag, according to Wilson's WSPs the AML officer is required to do additional research and determine if Wilson should file a SAR. If Wilson's AML officer determines that Wilson needs to file a SAR, the WSPs require the AML officer to do so. However, in many cases discussed below, the employee failed to report red flags, including those in the WSPs, to the AML officer.

Wilson Failed to Review Red Flags

9. Although Wilson's WSPs identify suspicious activity, list red flags, and describe Wilson's responsibility to file SARs, Wilson failed to adequately conduct AML reviews and to identify, investigate, and report certain suspicious activity related to transactions or patterns of transactions in its customers' accounts. Accordingly, Wilson failed to file necessary SARs.

10. Wilson's primary business involves receiving stock in physical form, selling the position, and wiring out the proceeds from the transaction. Although this pattern is a red flag of potentially suspicious activity according to Wilson's WSPs, Wilson often failed to investigate or to file SARs where necessary on these types of transactions.

11. Wilson failed to investigate or file SARs on numerous transactions in which Wilson's customers exhibited the red flag pattern of depositing a physical certificate, liquidating shortly after the deposit, and wiring the proceeds.

12. In several instances the conduct reached such a level that Wilson froze or even closed the customer accounts. Even when the suspicious activity caused Wilson to close an account, it never filed a SAR.

Illustrative Transactions

Trading in Issuer A

13. From March 2014 to June 2016 ("relevant Issuer A period"), at least fifty-two different Wilson customers deposited approximately 576,540,673 shares of Issuer A. Many of these customers then liquidated 263,641,501 shares during the same period and wired out the proceeds. Issuer A's CEO also maintained an account at Wilson.

14. During the relevant Issuer A period, the Commission filed an action against a Wilson customer for manipulating several stocks, including Issuer A. The Commission alleged that from January 24 through February 12, 2014, there was an active promotional campaign involving Issuer A. From January 24, 2014 through February 12, 2014, while the suspicious transactions were taking place, Issuer A's stock price increased by 573%. Although the Commission's complaint did not allege the manipulative conduct occurred at Wilson, a Wilson registered representative became aware of the Commission action when a customer emailed him an article discussing the SEC action on August 6, 2014. The registered representative notified the Wilson AML officer of the SEC action.

15. In early 2015, Wilson became aware of a news article that said Issuer A's CEO and others sold shares of Issuer A through Wilson and broker-dealer B. Wilson requested broker-dealer B statements from Issuer A's CEO and the other Wilson customers accused of selling. Wilson verified that Issuer A's CEO and others sold Issuer A through broker-dealer B at the same time as selling at Wilson. Wilson immediately froze the accounts for any transactions in Issuer A. Issuer A's CEO and others had signed a Wilson form at the time of each Issuer A deposit providing that they would not be permitted to sell Issuer A shares at another firm while also selling shares through Wilson.

16. In October 2015 Wilson's compliance department told a customer it wanted a new attorney to draft opinion letters regarding Issuer A. Wilson had concerns because of the quality of the attorney opinion letters and because of the approximately sixty-seven deposits of Issuer A securities, this attorney authored fifty-eight attorney opinion letters from thirty-four different Wilson customers. Wilson told the customer that Wilson wanted a new attorney with more of an "arm's length away from the company."

17. In 2016, the Commission filed an action alleging that Issuer A and Issuer A's CEO, among others, perpetrated a scheme to evade the antifraud and registration provisions of the federal securities laws. Wilson sent its customer an email saying that due to the SEC complaint, Wilson would not allow sales or deposits of Issuer A securities. Before filing its action, the Commission had sent ten document requests to Wilson regarding approximately ten customer accounts trading Issuer A securities. Wilson eventually determined the conduct to be concerning enough to close all accounts of the individuals named in the Commission's complaint. Wilson also closed the accounts of family members and several employees of Issuer A.

18. Although many of Wilson customers engaged in transactions of $5,000 or more involving Issuer A that exhibited the red flag activity described above of depositing physical certificates, liquidating the shares, and wiring the proceeds, Wilson never filed a SAR in regard to customer transactions involving in Issuer A. In addition, there were numerous other red flags associated with these transactions. Wilson knew the Commission filed an action alleging manipulation of Issuer A securities. Wilson knew that although several of its customers signed a document saying they would not trade shares at other firms, those customers were liquidating shares at both Wilson and broker-dealer B. Wilson was concerned enough that the same attorney was writing attorney opinion letters to tell a customer he needed to find a different attorney.

Finally, Wilson believed the conduct warranted closing numerous customer accounts. Despite all of these red flags, Wilson never filed a SAR on any suspicious trading in Issuer A securities.

Trading in Issuer B

19. During the period January 2014 through February 2014, Issuer B shares traded on an average daily volume of 13,323,656 shares. From February 20, 2014 through February 28, 2014, the average daily trading volume increased to 79,255,648 shares. Issuer B was actively promoted by Customer A and his firm, both of which maintained accounts at Wilson.

20. Customer A, a stock promoter, controls a number of promotional websites. The Commission had previously barred Customer A from associating with any broker or dealer based on violating the antifraud provisions of the federal securities laws. The Southern District of New York also had previously convicted Customer A on one count of conspiracy to commit securities fraud and wire fraud. In 2007, the Commission again filed an action naming Customer A.

21. From January 2014 through February 2014 at least eight Wilson customers liquidated approximately 31,434,688 shares of Issuer B for proceeds of $6,036,837. Each account engaged in the pattern of making large deposits of certificates, liquidating the shares, and wiring the proceeds out of Wilson.

22. Two of these accounts, Customer B and Customer C, also sold a combined 9,568,833 shares of Issuer B between February 2013 and May 2013 for proceeds of approximately $899,984. Customer B and Customer C again sold a combined 1,597,132 shares of Issuer B in November 2013 for proceeds of approximately $208,726. Wilson trade records show Customer B depositing approximately 102,108,183 shares of Issuer B and Customer C depositing 172,130,269 shares of Issuer B.

23. Wilson records reveal that Customer D is the corporate secretary of both Customer B and Customer C, while Customer E is the President of Customer C and also the CEO and Chairman of Customer B.

24. Customer D communicated with Wilson registered representatives via email regarding several Wilson customers also liquidating Issuer B securities. Customer D provided Wilson with deposit forms, copies of certificates, legal opinions, consulting agreements, and account statements from other firms on behalf of several Wilson customers. Wilson did not know the relationship between Customer D and the other customers, and did not have written approval from the customers to communicate with Customer D on behalf of their accounts. Despite these facts, the communications with Customer D about other customer accounts did not raise any red flags with Wilson.

25. Both Customer B and Customer C are prolific liquidators of penny stocks in their Wilson accounts. Between March 2013 and December 2015, Customer B liquidated approximately 61,537,381 shares for approximately $9,593,876 in proceeds. Between February 2013 and December 2015, Customer C liquidated approximately 87,357,716 shares of five

different securities for proceeds of approximately $19,747,697. During the same period, Customer C made one purchase of 8,000 shares.

26. Despite the red flag pattern of several customers depositing physical certificates, liquidating the shares at the same time and wiring the proceeds, Wilson never filed SARs relating to transactions in Issuer B's securities. Wilson also ignored additional red flag activity that it knew or should have known, including Customer A's criminal and regulatory history, common management between Customer B and Customer C, and Customer D's suspicious communication on behalf of other Wilson customers.

Trading in Issuer C

27. Customer E sold 100,000 shares of Issuer C between May and June 2015 through its account at Wilson for proceeds of approximately $60,817. An account in the name of Customer F sold 100,000 shares of Issuer C during June 2015 for proceeds of approximately $184,857.

28. The liquidation of Issuer C securities through Wilson triggered a FINRA investigation. In July 2015, Wilson provided FINRA with due diligence documents pertaining to 100,000 Issuer C shares deposited by Customer E. After identifying discrepancies in the due diligence documents, Wilson told FINRA in an email that Customer E's attorney provided a misleading opinion letter, as well as misleading agreements regarding Customer E's deposit of Issuer C shares. Wilson further stated, "[i]n this case the lawyer . . . presented what we now know to be a misleading set of facts. His opinion incorrectly traced the history of the shares."

29. Attorney A authored the misleading legal opinion letter regarding Issuer C shares held at Wilson. Wilson told FINRA that "we noticed that opinions we were reviewing from [Attorney A] in connection with customer's stock deposits were becoming concerningly unreliable and almost a month ago we made an internal decision that we would not accept any opinions that customers provided that came from [Attorney A]." Wilson told FINRA in an email that Wilson has an ongoing compliance investigation regarding the deposits.

30. Although Wilson told FINRA that Wilson had an ongoing compliance investigation of the deposits and Attorney A, Wilson's AML officer testified that he was not aware of such an investigation by Wilson. However, he testified that if he did find out that Attorney A was intentionally misstating or the customer was making misstatements he would, "SAR them so fast it would make your head spin."

31. Wilson ultimately terminated its relationship with Customer F, asking Customer F to transfer their account to another firm. Despite the red flags associated with the deposit, liquidation, and wire transfer of the proceeds, and other indicia of suspicious activity, such as a FINRA investigation, Wilson banning Attorney A from submitting attorney opinion letters, and asking Customer F to transfer their account, Wilson never filed a SAR regarding the suspicious transactions.

Violation

32. The Bank Secrecy Act ("BSA"), and implementing regulations promulgated by Financial Crimes Enforcement Network ("FinCEN"), require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least $5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) ("SAR Rule").

33. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

34. By engaging in the conduct described above, Wilson willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Undertakings

Respondent has undertaken to:

Within 30 days from the issuance of this Order, at its own cost, hire an independent AML Compliance Consultant, who has as of this date already been identified and agreed upon as not unacceptable to the Commission staff, to conduct a comprehensive review of Respondent's AML compliance program and the implementation and effectiveness of Respondent's AML policies and procedures. The Compliance Consultant shall submit to the Commission's staff a written report (the "Report") on the 90th day from the issuance of this Order describing the review it performed, the names of the individuals who performed the review, the conclusions reached, and the Compliance Consultant's recommendations for changes in or improvements to Wilson's AML program.

A. Wilson shall adopt all recommendations contained in the Report within one hundred fifty (150) days of the issuance of this Order; provided, that within one hundred and twenty (120) days after the date of the Order's issuance, Wilson shall in writing advise the Compliance Consultant and the Commission staff of any recommendation that Wilson considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Wilson considers unduly burdensome, impractical, or inappropriate, Wilson need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

B. As to any recommendation with respect to Wilson's policies and procedures on which Wilson and the Compliance Consultant do not agree, Wilson and the Compliance Consultant shall attempt in good faith to reach an agreement within one hundred and fifty (150) days after the date this Order is issued. Within fifteen (15) days after the conclusion of the discussion and evaluation by Wilson and the Compliance Consultant, Wilson shall require that the Compliance Consultant inform Wilson and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Wilson considers to be unduly burdensome, impractical, or inappropriate. Wilson shall abide by the determinations of the Compliance Consultant and, within thirty (30) days after final agreement between Wilson and the Compliance Consultant or final determination of the Compliance Consultant, whichever occurs first, Wilson shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

C. Within thirty (30) days of Wilson's adoption of all of the recommendations in the Report that the Compliance Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Wilson shall certify in writing to the Compliance Consultant and the Commission staff that Wilson has adopted and implemented all of the Compliance Consultant's recommendations in the Report. Thereafter, beginning two hundred forty days (240) after the entry of this Order, the Compliance Consultant shall conduct such review as it deems appropriate to verify that Wilson has appropriately implemented the recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Daniel Wadley, Regional Director, Salt Lake Regional Office, 351 South West Temple, Suite 6.100, Salt Lake City, Utah 84101.

D. On the anniversary of the date of the submission of the Report, the Compliance Consultant shall conduct a review to determine whether: (1) Wilson is implementing all of the Compliance Consultant's recommendations adopted pursuant to the foregoing provisions and this provision; and, (2) there have been any changes in the law or Wilson's business operations such that the recommendations should be amended and updated to take into account any such changed circumstance. Within forty-five (45) days after the anniversary date of the submission of the Report, the Compliance Consultant shall submit a written and dated report of its findings to Wilson and the Commission staff (the "Anniversary Report"). Wilson shall require that the Anniversary Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, and any further recommendations concerning changes in or improvements to Wilson policies and procedures directed at effecting implementation of the recommendations in the initial Report or the Anniversary Report or directed at addressing any changes in the law or business.

E. Wilson shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

F. To ensure the independence of the Compliance Consultant for the remainder of the engagement, Wilson: (1) shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the Compliance Consultant without the prior written

approval of the Commission staff; and (2) shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

G. Wilson shall maintain its agreement with the Compliance Consultant, which provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wilson, or any of its present or former affiliates, directors, officer, employees, or agents acting in their capacity as such. Wilson shall similarly maintain its agreement with the Compliance Consultant requiring that any firm with which the Compliance Consultant is affiliated or of which the Compliance Consultant is a member, and any person engaged to assist the Compliance Consultant in the performance of the Compliance Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Wilson, 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 (2) years after the engagements.

H. Recordkeeping. Wilson shall preserve for a period of not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of its compliance with the undertakings set forth herein.

I. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

J. Certifications of Compliance by Respondents. Wilson shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, 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 Wilson agrees to provide such evidence. The certification and supporting materials shall be submitted to Daniel Wadley, Regional Director, 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, in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within 60 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 Wilson 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 Daniel Wadley, Regional Director, Division of Enforcement, Securities and Exchange Commission, 351 South West Temple, Suite 6.100, Salt Lake City, UT 84101.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, 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.

E. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Vanessa A. Countryman
Acting Secretary