

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 86373 / July 15, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19249**

**In the Matter of**

**NOMURA SECURITIES  
INTERNATIONAL, INC.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Nomura Securities International, Inc. (“Nomura” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and admitting only the Commission’s jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (the “Order”), as set forth below.

### III.

On the basis of the Order and Respondent's Offer, the Commission finds that:<sup>1</sup>

#### Summary

1. These proceedings arise out of Nomura's failure reasonably to supervise two traders so as to prevent and detect their violations of antifraud provisions of the federal securities laws in connection with Nomura's secondary market purchases and sales of non-agency commercial mortgage backed securities ("CMBS") from approximately February 2010 through April 2014 ("relevant period"). On numerous occasions during the relevant period, two traders on Nomura's CMBS desk deliberately misled or lied to customers about, among other things, (i) the prices at which Nomura had bought or sold the securities; (ii) the bids and offers that Nomura made or received on the securities; (iii) the compensation that Nomura would receive on the trades, in the form of the difference, or "spread," between its purchase and sale prices; and/or (iv) who currently owned the security, often pretending that they were still negotiating with a third-party seller when Nomura had, in fact, already acquired the security.

2. The two Nomura CMBS traders misled or lied to investment advisers and other fund managers that were trading CMBS on behalf of clients to whom such advisers and managers owed fiduciary and other duties to obtain the best possible price, as well as financial institutions that were trading CMBS for their own proprietary accounts. The prices at which Nomura's customers bought and sold the CMBS at issue, and the amount of compensation that they thereby agreed to provide Nomura, were material to the customers, and the trading profits for the CMBS desk on those trades were inflated by the Nomura traders' misconduct.

3. Nomura had the means to monitor its traders' communications for false or misleading statements but failed to identify this misconduct. Under the circumstances described in this Order, Nomura failed reasonably to supervise the two CMBS traders with a view to preventing violations of antifraud provisions of the federal securities laws within the meaning of Section 15(b)(4)(E) of the Exchange Act. In considering the charges brought and relief imposed in this matter, the Commission has taken into consideration the significant cooperation that Nomura has provided throughout the investigation.

#### Respondent

4. Nomura is a New York corporation with offices in New York, New York. It has been registered with the Commission as a broker-dealer since 1969 and as an investment adviser since April 2012. It is a U.S. affiliate of Nomura Holdings, Inc., a public Japanese financial holding company with a principal place of business in Tokyo, Japan.

---

<sup>1</sup> The findings herein are made pursuant to the Offer and are not binding on any other person or entity in this or any other proceeding.

## **Relevant Persons**

5. James Im (“Im”) was associated with Nomura as a registered representative from August 2009 through September 2014. From August 2009 through June 2012, Im was co-head trader on Nomura’s CMBS desk, and he was the head trader on the CMBS desk from July 2012 through December 2014. He held the position of Managing Director, Fixed Income, Securitized Products Trading, Americas. During his career in the securities industry, Im held Series 7, 24, and 63 licenses. On May 15, 2017, the Commission filed a civil injunctive action against Im in the United States District Court for the Southern District of New York. *SEC v. James Im*, 17-CV-3613 (JPO). The Commission’s complaint in that action alleges that Im violated Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

6. Kee Chan (“Chan”) was associated with Nomura as a registered representative from August 2009 through September 2012. From August 2009 to June 2012, Chan was the other co-head trader on Nomura’s CMBS desk and held the position of Managing Director, Fixed Income, Securitized Products Trading, Americas. During his career in the securities industry, Chan held Series 7, 24, and 63 licenses. On May 15, 2017, the Commission filed a civil injunctive action against Chan in the United States District Court for the Southern District of New York. *SEC v. Kee Chan*, 17-CV-3605 (JPO). The Commission’s complaint in that action alleged that Chan violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. On May 16, 2017, the Court entered a final consent judgment permanently enjoining Chan, who did not admit or deny the Commission’s allegations, from violating those antifraud provisions and ordering him to pay disgorgement, plus prejudgment interest, and a civil monetary penalty. On May 19, 2017, the Commission issued an order, also with Chan’s consent, imposing remedial sanctions against Chan.

## **Background**

7. As described above, Im and Chan were the two co-head CMBS traders for Nomura during the relevant period, during which time Nomura was a broker-dealer engaged in secondary market trading of CMBS.

8. During the relevant period, Nomura had policies that prohibited its traders and other personnel from making false or misleading statements to customers about the terms of transactions.

9. CMBS are a type of asset-backed securities whose underlying assets are commercial real estate loans. CMBS are debt obligations and are commonly referred to as bonds. The CMBS secondary market was opaque because there was no contemporaneous public dissemination of trade prices, and purchasers and sellers of CMBS had no reliable way to learn the prices that dealers like Nomura paid and received unless the dealers disclosed them while negotiating a trade. The opaque nature of the secondary market also made investors dependent on dealers like Nomura in locating other buyers and sellers of CMBS.

10. CMBS prices are typically expressed as a percentage of the par value of the subject bond and the operative increments are expressed in “points” and “ticks,” which are equal to 1/32 of a point (or one thirty-second of one percent). For example, CMBS priced at 70-16 (70 and 16 ticks) means that the dollar price is 70.5% of the bond’s unpaid principal balance.

11. Nomura intermediated trades between buyers and sellers of CMBS, with Nomura buying the CMBS for its own account from one customer and then selling the same CMBS to another customer. On such trades, Im and Chan often negotiated Nomura’s purchase of CMBS from one customer and subsequent resale to another customer on the same day. Im and Chan generated a profit for Nomura by buying and selling the security and collecting the “spread” (or difference) between Nomura’s purchase and sale prices, which they negotiated separately, but often contemporaneously, with each counterparty.

12. In these circumstances, Nomura was trading the CMBS as a principal, but Nomura would generally own the bond for only a limited period of time, and sometimes just momentarily. Nomura therefore had little, if any, market risk on such trades. Im and Chan typically knew that they would be quickly selling that bond to another customer.

13. Based on the Nomura traders’ representations, a potential buyer would often agree to compensate Nomura by paying Nomura an amount above, or “on top” of, the price at which Nomura would be purchasing (or had purchased) the security, and/or the potential seller would sometimes agree to compensate Nomura by selling the security at a price below the price at which Nomura was able to sell the security to the potential buyer.

14. The traders’ negotiations with Nomura’s CMBS customers often occurred through electronic communications, typically instant messages or Bloomberg chats and occasionally email.

### **The Underlying Antifraud Violations**

15. During the relevant period, Im and Chan, directly and indirectly, made materially false or misleading statements to Nomura customers in both the purchase and sale of CMBS. Among other things, they knowingly made materially false or misleading statements about the prices at which the securities could be bought or sold; the amount of profit that Nomura would be making on trades; the prices that Nomura had paid or received when it bought and sold the bonds; and during negotiations with a potential buyer after Nomura had already purchased or agreed to purchase the securities, whether Nomura was still in active negotiations with the seller.

16. In certain instances, Im and Chan induced customers buying bonds from Nomura to increase their bids and to pay more for the bonds than they otherwise would have by falsely telling them that Nomura would be buying, or had bought, the bonds from another customer at a price that was higher than the selling customer’s actual offer or the price Nomura had bid or paid. By misstating these prices, Im and Chan misled Nomura’s customers about, among other things, the amount of compensation that Nomura would receive on the transaction. On some occasions, the customer expressly agreed on the amount of Nomura’s compensation based on, and to be paid “on top” of, the fictitious higher price that Im and Chan falsely represented they

had paid or needed to pay.

17. Im and Chan also induced or attempted to induce customers selling bonds to Nomura to lower their offers and accept less for the bonds by falsely conveying lower bids or sale prices to them than they had actually received from the customers that were seeking to buy, or who had bought, the bonds from Nomura. In some instances, they increased Nomura's spread by misleading both the buyer and the seller about the other party's bid or offer.

18. In other instances, Im and Chan falsely stated to customers, or otherwise misled customers into believing, that Nomura was still actively negotiating to buy the bonds at a certain price, when Nomura had already purchased the bonds at a lower price than the price at which they falsely told the customers they were still seeking to buy the bonds. In these situations, Im and Chan provided the buyer with fabricated accounts of the status of the purportedly ongoing negotiations with the seller, including false bid and offer prices and other fictitious details.

19. For example, in Nomura's sale of a bond that Nomura already owned to a certain investment manager ("Investment Manager A"), Chan gave a trader for Investment Manager A ("Trader A") a fabricated account of Chan's purportedly ongoing negotiations with the seller of the bond and then misstated the price at which Nomura had purchased the bond.

20. The transaction began with an initial communication to a Nomura salesperson by the owner of the bond, inquiring about the possibility of having Nomura sell it at "around" 65 to the same investment manager (Investment Manager A) to which Nomura had sold a different portion of the bond the prior week. The Nomura salesperson, in turn, reported to Chan that the seller "[w]ants to know our thoughts on where we could trade this to the [fund manager] we sold to last week. Wants to be around a \$65area." Chan reached out to Trader A about 90 minutes later, at 3:05 p.m., asking if he would be interested in purchasing another piece of the bond ("u care on any more size?"). Trader A responded that he would potentially be interested. No more than 15 minutes later, as reflected in a trade ticket time-stamped at 3:21 p.m., Nomura purchased the bond in question at 64.5 (or 64-16, expressed in ticks) from the owner.

21. A few minutes later, Chan went back to Trader A about the bond, stating "have guy asking on the bonds...u think u gonna care." Chan's statement was false, as Nomura had already purchased the bond at 64.5 and Chan was no longer negotiating with the seller, *i.e.*, there was no "guy asking on the bonds" at that point. Trader A then expressly asked Chan whether Nomura already owned the bond, to which Chan responded: "bot it...i think i stole em...i bot em at 65-16...showed 65...he wanted 66...i just split em." These statements were also false, because Nomura had already purchased the bond earlier that day at 64.5 — a full point lower than what Chan told Trader A he had paid — and the negotiations that Chan described were fabricated.

22. Trader A agreed to buy the bond at 66.5, intending to provide Nomura with a one point spread by paying one point more than what he understood Nomura had paid for the bond. In reality, Chan obtained two points of profit for Nomura on the trade by misrepresenting to Trader A that Nomura had paid 65.5 for the bonds, when it had actually paid 64.5. Based on the

face amount of the securities traded, Nomura made a gross profit of \$175,000 on this transaction.

23. As another example, in Nomura's sale of another bond that Nomura already owned to a different investment manager ("Investment Manager B"), Im gave a trader for Investment Manager B ("Trader B") a fabricated account of Im's purportedly ongoing negotiations with the seller of the bond and then misstated the price at which Nomura had purchased the bond and Nomura's compensation for the trade.

24. After purchasing at a price of 77-04 (77.125) an additional quantity of a bond that Im had just sold to Investment Manager B, Im resumed his conversation with Trader B and pretended to still be negotiating to purchase this additional quantity at 78 — nearly a whole point higher than what Nomura had just paid for it — and thereby leading Trader B to agree to buy the entire additional piece of that bond at 78 and pay Nomura an additional 4 ticks "on top" of what, unbeknownst to Trader B, was already nearly a whole point of compensation. The dialogue went as follows:

Im: heyt so these extra mlmt. . . *i think best i can get em at is 78. . .* what do u think. . . *i tried to talk them lower they are just not biting...saying they can check away. . .* don't want them to do that obvi

Trader B: we are good at 78

Im: *u pay me a little on top i assume?. . . 4/32?*

Trader B: yes..4 ticks good

Im: k brb [be right back]

Trader B: hey we can take all 6mm if you want..your choice

Im: *ok let me get them 1st*

...

Trader B: thx on mlmt

Im: *i would have asked u for more than 4/32 on the whole size but lets just say we are even now and move on to the next. . . :-)*

Trader B: ok cool

Im: so i sell u 6mm more mlmt 06-c2 aj 78-4

...

Trader B: yup that sounds good. thx for the trade

(Emphasis added.)

25. The highlighted statements made by Im were false and misleading, because Im knew that Nomura had already purchased the additional piece of the bond by the time this dialogue began, at 77-04 (77.125). Nevertheless, Im referred to a nonexistent seller from whom he was supposedly still negotiating to try to buy the bond at 78, falsely stating that (i) 78 was the best price that he thought he could get; (ii) the seller was threatening to sell the bonds elsewhere if Im did not buy them at 78; (iii) Nomura would only be compensated if Trader B agreed to pay above 78; and (iv) he was reluctantly agreeing to accept only 4 ticks in compensation. In fact, Nomura made 32 ticks, or a full point, in gross profit on this trade, equal to \$60,000 based on the face amount of the securities traded.

26. The information that Im and Chan misrepresented to Nomura's customers during their negotiations to buy and sell CMBS was material to the customers and would be important to a reasonable investor when making an investment decision. Under these circumstances, Im and Chan's conduct resulted in violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

27. Nomura made total gross profits of at least \$4,275,035 on transactions in which Im or Chan, directly or indirectly, made false or misleading statements to Nomura customers.

### **Nomura's Failure Reasonably To Supervise**

28. Throughout the relevant period, Nomura had policies requiring integrity and accuracy in communications with customers. One such policy, which applied to CMBS desk personnel, required that "[a]ll communications with clients (or prospective clients) must be truthful, fair and balanced," and prohibited "false, misleading, unwarranted or exaggerated statements, forecasts, opinions or claims." Another policy, which also applied to CMBS desk personnel, required that all such "communications must be truthful, balanced and . . . must not omit material facts and must not use language that is misleading." In addition, the January 2013 indictment of a trader of mortgage-backed securities at another firm for conduct similar to the conduct described above led to additional training sessions at Nomura during which traders were again instructed, among other things, as follows: "First and foremost for everyone is DO Not Lie."

29. During the relevant period, Nomura had certain procedures that provided for the review of electronic communications with third parties for violations of Nomura policies. As reflected above in paragraph 28 of the Order, those policies prohibited, among other things, the communications of false or misleading information. However, Nomura failed reasonably to implement procedures for monitoring communications that reasonably would be expected to detect false or misleading statements to Nomura customers. As noted, the CMBS secondary market was opaque because there was no contemporaneous public dissemination of bid, offer or trade prices, and secondary market purchasers and sellers of CMBS had no reliable way to learn the prices that dealers like Nomura paid and received unless the dealers disclosed them while negotiating a trade. Because one of the compliance risks faced by a broker-dealer trading CMBS in the secondary market was that the traders or salespersons might make false or misleading statements about pricing and other information to customers, Nomura needed to implement procedures reasonably designed to detect such false or misleading statements in order to address the risks arising from its business. Nomura's failure reasonably to implement such procedures for the review of CMBS customer communications during the relevant period meant that customer communications were not being monitored pursuant to procedures reasonably designed to determine whether CMBS traders or salespersons were making the types of false or misleading statements to Nomura customers described in this Order.

30. If Nomura reasonably had implemented such procedures for the review of communications with CMBS customers, it could have detected and prevented Im and Chan's false or misleading statements to customers about their CMBS transactions. Where, as here, there has been an underlying violation of the federal securities laws at a broker-dealer, the failure

to have reasonable systems to implement procedures directed at that misconduct can be evidence of a failure reasonably to supervise. Nomura's failure reasonably to implement procedures for reviewing communications with CMBS customers constituted a deficiency in the performance of Nomura's supervisory responsibilities.

31. Im and Chan were subject to the supervision of Nomura. By failing reasonably to implement procedures for reviewing their communications with customers, Nomura, within the meaning of Section 15(b)(4)(E) of the Exchange Act, failed reasonably to supervise, with a view to preventing and detecting violations of antifraud provisions of the federal securities laws by, Im and Chan.

### **Remedial Efforts and Cooperation Provided by Nomura**

32. In determining to accept the Offer, the Commission considered remedial acts undertaken by Nomura and significant cooperation afforded Commission staff. Since the relevant period, Nomura has implemented certain additional procedures to prevent and detect the type of misconduct described above in the Order, including additional procedures relating to the review of electronic and other communications for the prevention and detection of potentially false or misleading statements to Nomura customers. These additional procedures provide for a targeted review of communications relating to transactions that fall within certain risk-based parameters. The current review procedures apply to CMBS trading and certain other, ongoing parts of Nomura's trading business.

33. Nomura has cooperated by, among other things, identifying and analyzing communications relating to hundreds of transactions potentially involving misrepresentations of the type described in this Order; voluntarily producing all such communications and providing annotated packets of the most relevant communications; and promptly responding to various other requests for documents and information from Commission staff. The cooperation that Nomura provided helped enable Commission staff to direct the focus of the Commission's investigation and to shorten significantly the amount of time needed to conduct the investigation.

### **Ongoing Cooperation**

34. Nomura agrees to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Nomura shall (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by Commission staff; (ii) use its best efforts to cause its officers, employees, and directors to be interviewed by Commission staff at such time as Commission staff may reasonably direct; (iii) provide any certification or authentication of business records of the company as may be reasonably requested by Commission staff; (iv) use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings, or trials as may be requested by Commission staff; and (v) consistent with all lawful obligations, maintain in strict confidence communications with Commission staff pursuant to this provision.

## Undertakings

35. Nomura, within the time frames discussed below in paragraph 36 of the Order, undertakes to make payments to customers in the aggregate amount of approximately \$4,275,035 (“Remediation”), representing profits that Nomura earned on CMBS trades that are the subject of the Order. Nomura will be responsible for administering the payment of the Remediation to the affected customers.

36. Nomura undertakes to:

- a. Deposit the amount of the Remediation into a segregated account such as a separate bank account (“Remediation Account”) within 10 days of entry of the Order and provide Commission staff with evidence of such deposit in a form acceptable to such Commission staff;
- b. Submit to Commission staff, within 60 days of the date of entry of the Order, a disbursement calculation (“Remediation Calculation”) that identifies (i) each customer or former customer that is eligible to receive a portion of the Remediation, (ii) the exact amount of that payment as to each customer or former customer, and (iii) the methodology used to determine the exact amount of that payment as to each customer or former customer;
- c. Use best efforts to complete payment to all affected customers or former customers within 180 days of Commission staff’s approval of the Remediation Calculation; and
- d. Within 150 days after Nomura has completed the disbursement of all amounts payable to affected customers and former customers, Nomura will submit to Commission staff a final accounting and certification of the disposition of the remediation, which final accounting and certification will be in a format to be provided by Commission staff. The final accounting and certification will include, but not be limited to, (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred or proof of payment made; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made for any reason; and (vi) an affirmation that Nomura has made payments to all affected customers and former customers in accordance with the Remediation Calculation approved by Commission staff and the terms and conditions set forth above. Any and all supporting documentation for the accounting and certification will be provided to Commission staff upon request. Nomura will cooperate with any reasonable requests by Commission staff for information in connection with the accounting and certification.

In the event that the payments that Nomura makes to customers and former customers total less than the Remediation, Nomura shall include in the final accounting and certification an explanation of the reason(s) why the payments did not total \$4,275,035. If the amount paid to customers and former customers totals less than the total amount of disgorgement (including prejudgment interest) ordered in section IV.B. of the Order (“Disgorgement Amount”), and Commission staff determines that the facts and circumstances support the amount Nomura paid to customers, Nomura, within thirty (30) days of that determination, will pay the difference between the amount paid to customers and former customers and the Disgorgement Amount to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If, after discussions with Nomura representatives authorized to act on behalf of Nomura, Commission staff determines that Nomura has paid customers and former customers an insufficient amount, Nomura, within thirty (30) days of this determination will pay customers and former customers the amount of the deficiency. If the total amount of the deficiency plus the amount Nomura previously paid customers and former customers (“Customer Payment Amount”) is less than the Disgorgement Amount, Nomura, within thirty (30) days of this determination, will pay the difference between the Disgorgement Amount and the Customer Payment Amount to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. Compliance by Nomura with paragraphs 35 and 36 of the Order will satisfy the disgorgement and prejudgment interest ordered below in section IV.B. of the Order.

37. Nomura agrees to be responsible for all of Nomura’s tax compliance responsibilities associated with the Remediation and will retain any professional services necessary. The costs and expenses of any such professional services will be borne by Nomura, and the payment of taxes applicable to the Remediation, if any, will not be paid out of the Remediation funds.

38. Commission staff may extend any of the Remediation procedural dates set forth above for good cause shown. Deadlines for dates relating to the Remediation 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.

39. In determining whether to accept the Offer, the Commission has considered these undertakings as well as the remedial efforts and cooperation provided by Nomura.

#### **IV.**

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

Accordingly, it is hereby ORDERED, pursuant to Section 15(b) of the Exchange Act, that:

- A. Nomura is censured for failing reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act.
- B. Nomura shall, within 180 days of the entry of the Order, pay to the Commission disgorgement of \$1,133,500 and prejudgment interest of \$242,609.67. The foregoing amounts shall be deemed satisfied by Nomura's payments directly to customers as described above in paragraphs 35 and 36 of the Order. If timely payment is not made, additional interest will accrue pursuant to Commission Rule of Practice 600.
- C. Nomura shall, within ten days of the entry of the Order, pay a civil monetary penalty in the amount of \$500,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act. If timely payment of the civil monetary penalty 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. Nomura may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
  2. Nomura 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. Nomura 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 Nomura as the 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 George Stepaniuk, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York NY 10281.

- D. Amounts ordered to be paid as civil money penalties pursuant to the 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.

Vanessa A. Countryman  
Secretary