

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10810 / July 31, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 89443 / July 31, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4154 / July 31, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19900

In the Matter of

J. MICHAEL PEARSON,

Respondent.

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 J. Michael Pearson (“Pearson” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents

to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. This matter involves material misstatements and omissions in quarterly earnings presentations and calls and quarterly and annual filings for 2014 and 2015 that were made, approved, and/or signed by J. Michael Pearson (“Pearson”) during his tenure as the chief executive officer and chairman of the board of Valeant Pharmaceuticals International, Inc. (“Valeant”), now known as Bausch Health Companies Inc. (“Bausch Health”). Bausch Health is a publicly-traded global pharmaceutical and medical device company that develops, manufactures, and markets a broad range of branded, generic and branded generic pharmaceuticals, over-the-counter products, and medical devices. During the relevant period, Bausch Health was known as Valeant Pharmaceuticals International, Inc. Due to its growth-by-acquisition business strategy in 2014 and 2015, Valeant supplemented its disclosures pursuant to Generally Accepted Accounting Principles (“GAAP”) with non-GAAP financial measures as “a meaningful, consistent comparison of the company’s core operating results and trends.” During earnings call presentations, Valeant management, including Pearson, presented on same store organic growth (“organic growth”), which represented growth rates for businesses owned for one year or more, and “Cash EPS,” which excluded costs associated with business development, among other things. When discussing certain GAAP and non-GAAP financial measures, Valeant and Pearson failed to disclose to investors certain material information about these measures.

2. In 2013, Valeant helped establish a mail order pharmacy, Philidor Rx Services, LLC and played a significant role in Philidor’s business. Valeant provided an advance of \$2 million and entered into agreements with Philidor to dispense Valeant’s products. From Q3 2014 through Q3 2015, Valeant expanded its sales to Philidor. Philidor increasingly contributed to Valeant’s U.S. organic growth in particular. By Q3 2015, Valeant announced double-digit growth for the fifth consecutive quarter, with U.S. organic growth of 22%. Philidor sales had grown to such an extent that it alone accounted for over 14% of U.S. organic growth. Excluding those sales to Philidor, Valeant’s U.S. organic growth for the quarter was over 7%. Valeant disclosed for the first time it had, since December 2014, an option to purchase Philidor in its Q3 2015 earnings call.

3. In Q2 2015, Valeant recorded revenue resulting from price appreciation credits (“PACs”) it received pursuant to its Distribution Services Agreements (“DSAs”) with its major wholesalers, which impacted certain reported GAAP and non-GAAP measures. A provision in the

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

DSAs provided for Valeant to offset distribution fees owed to wholesalers with credits for price increases on Valeant products held in wholesalers' inventory. Thus, price increases generated additional net revenue to Valeant not just from prospective products sales at the incrementally higher prices, but also from previously sold products still held by wholesalers. On June 18, 2015, Valeant recorded approximately \$110 million in net PAC revenue through a 500% price increase on Glumetza, a drug acquired on April 1, 2015. Based on options presented by an internal accountant as available alternatives, Valeant's management, including Pearson, approved the allocation of the \$110 million Glumetza PAC as net revenue to products other than Glumetza. The erroneous allocation of the Glumetza PAC resulted in misleading statements in Valeant's Q2 2015 earnings presentation and Commission periodic reports filed for Q2 and Q3 2015 and year ended 2015.

4. On October 26, 2015, in response to media and analyst attention over its relationship with Philidor, Valeant gave an investor presentation concerning Philidor. On April 29, 2016, in its annual report for 2015 ("2015 Form 10-K") as signed and certified by Pearson, Valeant restated its financial statements for the year ended December 31, 2014 to reduce previously reported fiscal year 2014 revenue from sales to Philidor by approximately \$58 million. Among other things, Valeant acknowledged the existence of material weaknesses in its internal control over financial reporting.

5. Based on the foregoing and the conduct described herein, Pearson violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 304(a) of the Sarbanes-Oxley Act, and Rule 100(b) of Regulation G of the Exchange Act and caused Valeant's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

Respondent

6. **J. Michael Pearson** ("Pearson"), age 61, is a resident of Fort Lauderdale, Florida. Pearson became Valeant's CEO and chairman of the board of directors in 2008. Pearson resigned from Valeant in May 2016. As CEO, Pearson approved, signed, and certified the filing of Valeant's quarterly and annual filings. He also reviewed and ultimately approved Valeant's earnings presentations and spoke during earnings calls.

Relevant Entities

7. **Valeant Pharmaceuticals International, Inc.**, now known as **Bausch Health Companies Inc.** ("Bausch Health"), is a British Columbia corporation headquartered in Laval, Quebec with its principal administrative offices in Bridgewater, New Jersey. On July 13, 2018, Valeant changed its name to Bausch Health. Bausch Health's common stock is registered under Section 12(b) of the Exchange Act and is dually listed on the New York and Toronto Stock Exchanges.

8. **Philidor Rx Services LLC** is a defunct Delaware limited liability company that was formed in January 2013. Philidor was a licensed pharmacy based in Hatboro, Pennsylvania. Approximately 95% of the product dispensed by Philidor and its affiliated pharmacies (collectively,

“Philidor”) consisted of Valeant branded drugs. Valeant acquired an option to purchase Philidor on December 15, 2014, and terminated its relationship with Philidor on October 30, 2015. Valeant fully paid for but never exercised its option to purchase Philidor.

Facts

Philidor

9. Valeant management, including Pearson, identified Philidor as a “key strategy” to turnaround the dermatology unit in 2014. Valeant’s agreements with Philidor included similar terms as with any wholesaler, but there were several other important aspects to Valeant’s relationship with Philidor. Valeant: 1) provided an advance of \$2 million to Philidor; 2) was involved in setting up its infrastructure and hiring of key employees; 3) maintained a sales force to promote access to its products through Philidor to health care providers; and 4) advised and assisted Philidor on its launch and expansion to other states. In addition, Valeant agreed to reimburse Philidor for the cost of Valeant drugs that the third-party payors and insurance companies did not cover and deducted this obligation from gross revenue. Valeant internally recorded this obligation as the “alternative fulfillment subsidy” or “AF subsidy.” Valeant’s sales to or through Philidor increased throughout 2014 and 2015 and Philidor sales became one of the growth drivers for Valeant’s dermatology products.

10. During the relevant period, Pearson received information on product sales as the quarters progressed and participated in weekly calls in which Valeant’s business unit heads discussed their latest revenue numbers and expected sales against targets, which Pearson participated in setting. Pearson also received regular updates on product sales that indicated increases in quarterly sales made to Philidor.

11. Valeant evaluated its disclosure obligations in light of the option agreement. As of December 1, 2014, Valeant’s disclosure thresholds required Valeant to disclose details about transactions the size of the Philidor transaction, including mentioning the acquiree by name, in its annual report on Form 10-K for 2014. On December 10, 2014, during a meeting Pearson attended, Valeant increased its thresholds in an amount that exceeded the anticipated total option purchase price for Philidor such that Valeant would no longer disclose transactions of the size of the Philidor transaction by name in the 2014 Form 10-K. Management informed the Board’s audit and risk committee about the increased disclosure threshold, including its impact on disclosure of the Philidor option transaction.

12. In early 2015, Valeant management, including Pearson, was informed that Philidor was found to have violated certain terms of the pharmacy network agreements that governed Philidor’s participation in three of the pharmacy networks for health plans or pharmacy benefit managers.

Valeant’s Disclosures Regarding Philidor

13. Valeant reported its results for the quarters ended September 30, 2014 through September 30, 2015 in earnings calls and presentations. Pearson approved the content of

Valeant's earnings presentations and spoke during the earnings calls. From time to time, Valeant and Pearson referred to an alternative fulfillment channel, but they did not disclose the material impact of Philidor sales on certain of Valeant's GAAP and non-GAAP financial measures.

- a. *Same Store Organic Growth:* Valeant announced U.S. organic growth in the double digits for each quarter from Q3 2014 through Q3 2015. Philidor represented an increasingly larger portion of Valeant's U.S. organic growth, ranging from 5% to over 14%. Valeant would have failed to achieve double digit U.S. organic growth in Q3 2015 without Philidor.
- b. *Cash EPS:* Valeant exceeded its guidance and analyst consensus estimates of \$2.55 for Q4 2014 when it announced Cash EPS of \$2.58 in its earnings presentation. Valeant's sales to Philidor contributed \$0.12 to Valeant's Q4 2014 Cash EPS.
- c. *Dermatology unit revenue:* Valeant announced its dermatology unit's revenue of \$273 million for Q3 2014 and \$425 million for Q4 2014 in its earnings calls. Valeant conveyed no information regarding the material contribution of the sales made by Philidor, which represented over 13% of the third quarter revenue or over 16% of the fourth quarter revenue.
- d. *Dermatology unit's performance:* Valeant highlighted the performance of the dermatology unit in its earnings calls, variously describing it as experiencing a "turnaround" (Q3 2014), having "strong growth for promoted brands" (Q4 2014), experiencing "positive organic growth" for all promoted brands (Q1 2015), and "outperforming" (Q2 and Q3 2015). Valeant and Pearson did not disclose that sales specifically to Philidor had been a key strategy for dermatology, that Philidor was one of the growth drivers for the unit, or that Valeant had increased sales to Philidor.

14. During Valeant's earnings calls, Pearson made the following statements which omitted material information regarding the contributions from the sales made to Philidor:

- a. *Q1 2015:* "Dermatology revenue grew 38% year on year and script growth grew 37% year on year."
- b. *2Q 2015:* "... our overall same-store total company organic growth was 19% for the quarter" and "we have now delivered four consecutive quarters of more than 15% same-store organic growth."

15. Valeant failed to disclose requisite material information about Philidor in the Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") in its quarterly reports on Form 10-Q for Q3 2014, annual report on Form 10-K for 2014, and quarterly reports on Forms 10-Q for Q1, Q2, and Q3 2015. Item 303(b)(2) requires issuers to disclose in quarterly reports "any material changes in the registrant's results of operations ... with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal

year.” Item 303(b)(2) of Regulation S-K, 17 C.F.R. § 229.303(b)(2). Regulation S-K also requires that the discussion of material changes in results of operations during the quarter “shall identify any significant elements of the registrant’s income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant’s ongoing business.” 17 C.F.R. § 229.303(b), Instruction 4. Additionally, reporting companies must disclose in the MD&A section of Form 10-K information “necessary to an understanding of [the company’s] financial condition, changes in financial condition and results of operations” and “any known trends or uncertainties” or “any unusual or infrequent events or transactions” that materially affected a company’s operations. Item 303(a) of Regulation S-K, 17 C.F.R. § 229.303(a). Pearson knew or should have known that Valeant did not specifically include disclosures about Philidor in its MD&A section of Forms 10-K and 10-Q for these periods.

- a. *Relationship with Philidor:* Valeant made sales to Philidor of dermatology drugs facing eroding market share or reimbursement blocks, or newly launched products to boost prescription volume. Valeant’s MD&A made no mention of its unique relationship with Philidor, even as Valeant’s sales to Philidor increased each quarter.
- b. *Risks related to Philidor:* Valeant failed to disclose in its MD&A the risks arising from its relationship with Philidor, particularly beginning in Q1 2015, when management was informed that three pharmacy benefit managers had notified Philidor that it was in violation of certain terms of its pharmacy network agreements.

16. Pearson signed and certified Valeant’s Forms 10-Q for Q3 2014 and Q1, Q2, and Q3 2015, and Form 10-K for 2014.

17. On October 26, 2015, Valeant gave an investor presentation concerning Philidor. In this presentation, Valeant did not fully disclose its Philidor relationship or explain how Philidor sales had impacted certain GAAP and non-GAAP measures Valeant presented in earlier quarters. Valeant also failed to disclose that it had changed its internal disclosure threshold before determining that no disclosures were required when it purchased the option to acquire Philidor. Pearson participated in reviewing and approving the contents of the October 26, 2015 investor presentation.

Price Appreciation Credits

18. Valeant’s largest customers are major U.S. drug wholesalers, who enter into distribution service agreements (“DSAs”) that, among other things, set the fees Valeant pays wholesalers for their distribution and inventory management services. Through at least 2015, these DSAs contained price appreciation clauses whereby Valeant was entitled to credits from such wholesalers for price increases on products currently held by the wholesalers. This PAC was calculated based on the wholesaler’s inventory of the product subject to a price increase, multiplied by the amount of the price increase. Pursuant to the terms of the DSAs, PACs offset the DSA fees

Valeant owed to wholesalers. Valeant recorded the net revenue impact of PACs at the time customers were notified of the price increase.

19. Valeant acquired a diabetes drug called Glumetza on April 1, 2015, through its acquisition of Salix Pharmaceuticals, Ltd. Valeant initially planned to raise Glumetza's price by 50% effective May 15, 2015. Throughout Q2 2015, Valeant forecasted the net revenue to be generated by the corresponding Glumetza PAC, which was based on the projected amount of Glumetza inventory held by wholesalers.

20. On June 3, 2015, Valeant management approved a price increase for Glumetza of 500% and notified customers of the price increase approximately two weeks later. Valeant's accounting practice was to record PACs to the product whose price increase generated the PACs, thereby offsetting DSA fees accrued on sales of that product and increasing net revenue attributable to that product. In this instance, however, most of the Glumetza inventory had been purchased from Salix, which had accrued no DSA fees to offset the Glumetza PAC. Rather than recording any of the \$110.4 million Glumetza PAC as revenue to Glumetza, Valeant allocated the entire PAC generated by the Glumetza price increase as revenue to 106 other products. Pearson knew or should have known that Valeant did not record the Glumetza PAC as revenue attributable solely to Glumetza.

21. Valeant management approved a second Glumetza price increase of 50%, effective July 31, 2015, that generated \$21.5 million in net PAC revenue. In October 2015, Valeant similarly allocated \$11.9 million of the net revenue arising from the Q3 2015 Glumetza PAC to other products. This allocation was based on the amount of wholesaler's Glumetza inventory that had been purchased from Salix rather than Valeant.

Valeant's Disclosures Regarding the Glumetza PAC and Its Allocation

22. Valeant reported its results for the quarter ended June 30, 2015 in an earnings call, presentation, and Form 8-K on July 23, 2015 and filed its Form 10-Q on July 28, 2015. Pearson spoke during the earnings call, approved the earnings presentation, and signed and certified the Form 10-Q. Pearson knew or should have known that Valeant's Q2 2015 disclosures did not include the material impacts of the \$110.4 million in net revenue from the Glumetza PAC and the PAC's allocation to other products to certain GAAP and non-GAAP financial measures.

- a. *Cash EPS*: Valeant's earnings presentation and Form 8-K reported Cash EPS of \$2.56. Valeant's guidance for the quarter was \$2.40 – \$2.50 and analyst's consensus estimate was \$2.46.
- b. *Same Store Organic Growth*: Valeant's earnings presentation and Form 8-K reported 19% same store organic growth for Q2 2015, but failed to disclose that this calculation included approximately \$85 million of the Glumetza PAC net revenue. During the earnings call, Pearson stated that "our overall same store total company organic growth was 19% for the quarter" and "we have now delivered four consecutive quarters of more than 15% same store organic growth."

- c. *Top 20 Brands:* Valeant's earnings presentation reported that Glumetza was the company's #18 product based on revenue of \$26 million. Had Glumetza's PAC been recorded entirely as Glumetza's revenue, Glumetza would have been among Valeant's Top 5 products.
- d. *Revenues by Business Unit:* Valeant's Form 8-K did not disclose that the Glumetza PAC allocation impacted reported business unit revenues, resulting in greater revenue by Valeant's neurology, dermatology, and ophthalmology business units and lower gastrointestinal (Salix) revenue because of the Glumetza PAC's allocation to other products.
- e. *Incremental Revenues and Profits from Acquisitions and Existing Business:* Valeant's Form 10-Q did not disclose the impact of the Glumetza PAC allocation on the reported incremental revenues and profits. The allocation reduced the reported incremental revenue and profits from acquisitions by \$85 million, and increased the reported revenue and profits from existing business by the same amount.
- f. *MD&A:* Valeant's Q2 2015 Form 10-Q did not disclose that the Glumetza PAC alone represented approximately one-third of Valeant's operating income that quarter.

23. Valeant reported its results for the quarter ended September 30, 2015 in an earnings call, presentation, and Form 8-K on October 19, 2015 and filed its Q3 2015 Form 10-Q on October 26, 2015. Pearson spoke during the earnings call, approved the earnings presentation, and signed and certified the Form 10-Q. Similar to the prior quarter, Valeant's Q3 2015 disclosures did not include the material impacts of the Q2 Glumetza PAC and the Q2 and Q3 PAC allocations to certain GAAP and non-GAAP financial measures for the nine months ended September 30, 2015.

24. On April 29, 2016, Valeant filed its Form 10-K for the year ended December 31, 2015, following an internal investigation directed by a special committee of the company's board of directors and conducted by outside legal and accounting professionals. In this filing, signed and certified by Pearson after the Company announced his replacement as CEO and based on the results of the internal investigation as reported to Pearson by members of the company's board, Valeant disclosed the existence of PACs, which had a net revenue impact of \$171 million in 2015. The 2015 Form 10-K, however, did not disclose that two price increases on Glumetza accounted for \$132 million (or 77%) of total PACs or that \$122 million from the two Glumetza PACs were allocated to other products. The two Glumetza PAC allocations lowered by \$96 million the reported \$130 million in PACs that came from pricing actions in existing business, lowered the reported revenues and profits from existing business by \$96 million, and increased the reported incremental revenue and profits from acquisitions by the same amount.

Offer and Sale of Securities

25. Valeant offered and sold securities throughout the relevant time period. On

March 18, 2015, Valeant issued and sold 7.3 million shares of common stock pursuant to a prospectus supplement to a Form S-3 registration statement filed on June 10, 2013. During Q1 2015, Valeant also issued four senior notes with the total par value of \$9.5 billion. From Q3 2014 through Q4 2015, Valeant also offered and sold 59,075 shares of common stock to its employees pursuant to the company's employee stock purchase plan.

Violations

26. As a result of the conduct described above:
 - a. Respondent Pearson violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person in the offer or sale of securities from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Claims under Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require a showing of scienter; instead, a showing of negligence is sufficient. *Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453-54 (3d Cir. 1997).
 - b. Pearson caused Valeant's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require issuers of securities registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual, current, and quarterly reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.
 - c. Pearson caused Valeant's violations of Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.
 - d. Pearson violated Rule 100(b) of Regulation G, which prohibits a registrant, or a person acting on its behalf, from making public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading. By its express terms, scienter is not required in order to violate Regulation G.

- e. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer and chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for: (i) any bonus or incentive-based or equity-based compensation received by that person from the issuer during the twelve-month periods following the false filings; and (ii) any profits realized from the sale of securities of the issuer during those 12-month periods. Section 304 does not require that the chief executive officer or chief financial officer personally engage in the misconduct that resulted in the restatement to trigger the reimbursement requirement, and the Commission does not allege that Pearson participated in the internal accounting control violations that resulted in the restatement. Pearson has not, to date, reimbursed Bausch Health for any portion of his incentive-based compensation or stock sale profits received during the 12-month periods following the filing of inaccurate financial statements described above and, therefore, Pearson violated Sarbanes-Oxley Section 304.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Pearson cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 and Rule 100(b) of Regulation G thereunder, and Section 304(a) of the Sarbanes-Oxley Act.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$250,000.00 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) 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 Pearson 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 Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.

C. Respondent shall, within 14 days of the entry of this Order, reimburse Bausch Health for a total of \$450,000.00 representing incentive-based compensation pursuant to Section 304(a) of the Sarbanes-Oxley Act. Pearson shall simultaneously deliver proof of satisfying this reimbursement obligation to Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph IV.B above. 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, he shall not argue that he 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 he 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil

penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary