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

**SECURITIES EXCHANGE ACT OF 1934**
**Release No. 93042 / September 17, 2021**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-20568**

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| **In the Matter of**<br><br>**RBC Capital Markets, LLC,**<br><br>**Respondent.** | **ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b), 15B(c) 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), 15B(c) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against RBC Capital Markets, LLC ("RBC" 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), 15B(c) 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[1] that:

## Summary

This matter involves improper conduct by RBC in connection with certain negotiated new issue municipal bond offerings. Between January 2014 and December 2017 ("the relevant period"), RBC, when acting as sole underwriter or senior syndicate manager in negotiated offerings, undertook to allocate bonds according to an internal "standard methodology," in the absence of different instructions from issuers. The firm's standard methodology required RBC to fill all orders for customers and all dealer orders for RBC, syndicate members and other broker-dealers before allocating bonds to unregistered brokers known as "flippers." However, RBC did not always follow the standard methodology when it did not have priority instructions from issuers and, in forty-one instances when orders exceeded the bonds available, it failed to prioritize institutional customer and/or dealer orders ahead of flipper orders. Further, in three instances where it had issuer instructions, RBC violated those instructions by allocating bonds to flippers ahead of orders for retail customers even though it knew that the flippers' orders did not meet the issuer's retail eligibility criteria for the offering. Moreover, in certain offerings in which it was not a participating underwriter, RBC obtained new issue municipal bonds for the firm's own inventory by placing indications of interest with flippers who then placed customer orders with underwriters, instead of RBC submitting dealer orders to the underwriters. Through this practice, RBC caused the flippers to act as unregistered brokers and circumvented issuer order priorities, improperly receiving higher priority in those offerings.

As a result of this conduct, RBC violated Municipal Securities Rulemaking Board ("MSRB") Rules G-11(k) and G-17. In addition, RBC violated MSRB Rule G-27, and failed reasonably to supervise, within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting violations of the MSRB Rules G-11(k) and G-17 by certain registered representatives. RBC also violated Section 15B(c)(1) of the Exchange Act and caused violations of Section 15(a)(1) of the Exchange Act.

## Respondent

1. **RBC Capital Markets, LLC**, incorporated in Minnesota and headquartered in New York, New York, is registered with the Commission as a broker-dealer, municipal securities dealer, investment adviser and municipal advisor.

## Other Relevant Entities

2. **RMR Asset Management Company ("RMR")** was a California corporation with a principal place of business in Chula Vista, California. RMR primarily bought and sold

[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.

new issue bonds. RMR was not registered with the Commission. The Commission filed an enforcement action against RMR and its associates in August 2018.[2]

3. **Core Performance Management, LLC ("CPM")** was a Florida limited liability company located in Boca Raton, Florida that was dissolved on July 27, 2016. During the relevant period, CPM primarily bought and sold new issue municipal bonds. CPM was not registered with the Commission. The Commission filed an enforcement action against CPM and its associates in August 2018.[3]

## Background on Municipal Underwriting Process

4. Municipalities often raise money by issuing bonds that are sold to the public through an underwriting process. In what is known as a "negotiated" offering, the municipal issuer chooses a broker-dealer to act either as sole underwriter or as the senior manager of an underwriting syndicate. An underwriting syndicate is a group of broker-dealers that join together to purchase new issue bonds from the issuer to distribute the bonds to the public.

5. Negotiated offerings of new issue municipal bonds are conducted according to certain rules, including the "priority of orders," which establishes the sequence in which bonds will be allocated to specific types of orders. Issuer priority rules typically assign retail customer orders the highest priority in the bond allocation process. Issuers generally prioritize customer orders ahead of orders for broker-dealers seeking bonds for their own inventory, and as a result such orders are often not filled. Potential purchasers consider order priorities significant because orders for bonds in primary offerings often exceed the amount of bonds available.

## RBC's Practices Concerning Flippers

6. During the relevant period, the Head of RBC's municipal sales, trading and syndication group ("RBC's Municipal Manager") appointed a single RBC salesperson to cover accounts held by RMR, CPM and their affiliates (collectively, "the flippers") at RBC. The flippers were assigned to a single institutional salesperson because the Municipal Manager understood that the flippers' primary business was buying and selling new issue bonds based on indications of interest that they received from broker-dealers.

[2] *SEC v. RMR Asset Management Company, et al.*, 18-CV-01895-AJB-JMA (S.D. Cal. filed Aug. 14, 2018) (partially settled action against RMR and 13 associated individuals for acting as unregistered brokers and, as to 10 of them, for engaging in fraudulent practices in connection with flipping new issue municipal bonds). In August 2020, the U.S. District Court for the Southern District of California granted summary judgment to the SEC, finding that three RMR associates acted as unregistered brokers in violation of Section 15(a) of the Exchange Act when they engaged in thousands of securities transactions for RMR.

[3] *SEC v. Core Performance Management, LLC, et al.*, 18-CV-81081-BB (S.D. Fla., filed Aug. 14, 2018) (settled action against CPM and five associated individuals for acting as unregistered brokers and for engaging in fraudulent practices in connection with flipping new issue municipal bonds).

7. RBC's Municipal Manager directed that all trading in new issue bonds with the flippers be done through the salesperson appointed to cover them. Accordingly, that salesperson submitted orders for new issue bonds for the flippers to RBC's syndicate desk only if directed to do so by the Municipal Manager and/or an underwriter on the syndicate desk. The salesperson likewise placed indications of interest for new issue bonds with the flippers for RBC's inventory only if instructed to do so by trading personnel on RBC's trading desk.

8. During the relevant period, RBC had a written internal policy (the "Policy") relating to new issue municipal bond offerings. The Policy established procedures that RBC's syndicate desk was to follow when RBC was acting as sole underwriter or senior syndicate manager. In the absence of different priority instructions from issuers, flippers were to receive the lowest priority. Specifically, the Policy required RBC's syndicate desk to adhere to a "standard methodology," and prioritize orders and allocate bonds as follows:

- 1st priority: Orders for Customers
- 2nd priority: Orders for [RBC's] own account, [RBC] related accounts or [RBC] affiliated accounts (or syndicate member's own, related or affiliated accounts, if applicable)
- 3rd priority: Orders for Broker-Dealers other than [RBC] and syndicate members
- 4th priority: Any other orders

9. The Policy defined "Customer" orders entitled to first priority under the standard methodology to "generally include all orders received by or on behalf of an individual or institution other than 2nd, 3rd and 4th priority." Orders that had last, or fourth, priority were defined as "[any] other orders, including orders such as those submitted by a customer who, in the reasonable belief of [RBC] plans to purchase the securities and immediately resell such securities at higher prices (known as a "flipper") or instances in which [RBC] is unable to reasonably authenticate the status or qualification of an order during a retail order period directed by an Issuer."

10. Pursuant to the Policy, in advance of each negotiated offering where RBC's syndicate desk acted as sole underwriter or senior syndicate manager, RBC provided issuers a written notice titled "Notice of Priority of Orders from and Allocations to Investors" (the "Notices"). The Notices described the standard methodology, and they stated that RBC would "deviate from such priority only when deemed by [RBC] to be in the best interests of the syndicate or unless the Issuer otherwise consents."

11. The Policy further required RBC's syndicate desk to document any and all deviations from established priority provisions, as well as the reasons for the deviations, and to keep that documentation and any issuer instructions in the firm's underwriting files.

## RBC Improperly Allocated Bonds to the Flippers

12. During the relevant period, when RBC was acting as sole underwriter or senior syndicate manager, RBC's syndicate desk did not always adhere to the standard methodology set forth in the Policy and the Notices in the absence of different priority instructions from issuers.

On forty-one occasions when orders exceeded the new issue bonds available, the syndicate desk prioritized orders for flippers over orders for "Customers" (as defined by the standard methodology) and dealer orders. Further, the syndicate desk failed to document these deviations from the standard methodology or the reasons for them. The decisions to allocate new issue bonds to the flippers in these instances were made by the Head of RBC's syndicate desk or the underwriter on the desk assigned to directly manage the offering, in consultation with the Municipal Manager and/or RBC's municipal sales manager.

13. When RBC's syndicate desk allocated oversubscribed bonds to the flippers in contravention of the standard methodology, the flippers orders' "crowded out" institutional customer and/or dealer orders which should have been filled first according to the standard methodology. For example, in September 2016, RBC's syndicate desk served as senior manager for a negotiated offering of municipal bonds in the total principal amount of $127.6 million. In connection with the offering, RBC's sales desk submitted eight orders for four different maturities on behalf of RMR and two of its affiliates to the firm's syndicate desk. Orders for all four of the maturities sought by the flippers exceeded the available bonds, with three of the maturities oversubscribed between 290% and 622%. Nonetheless, RBC's syndicate desk allocated a combined $3.3 million in the four maturities to RMR and its affiliates while approximately $130.3 million in institutional customer orders and approximately $127.3 million in dealer orders went unfilled.

14. RBC's syndicate desk allocated oversubscribed new issue bonds to the flippers in order to maintain relationships with the flippers who often purchased new issue bonds from RBC in deals where there were not enough other buyers for the bonds. As described below, RBC also acquired new issue bonds in offerings in which it was not a participating underwriter through the flippers.

15. RBC's syndicate desk also failed to follow issuer priority instructions in connection with a November 2015 negotiated offering of municipal bonds in the total principal amount of $626.8 million for which RBC acted as senior manager. The issuer directed that a retail order period be held in which first priority would be given to retail customer orders. Shortly before the retail order period closed, the salesperson assigned to cover the flippers submitted two orders for RMR and an order for a CPM affiliate to the syndicate desk. The salesperson falsely certified the orders met the issuer's retail eligibility criteria, and affirmed their eligibility by providing zip codes that were not associated with the flippers. Although the Municipal Manager and the Head of the syndicate desk, who directly managed the offering, were aware that the flippers were not retail customers and that they did not meet the issuer's retail eligibility criteria, they allocated $500,000 in bonds of one maturity to RMR and $1,000,000 and $250,000 in bonds of another maturity to RMR and the CPM affiliate, respectively. As a result, retail orders from other buyers for these maturities were not filled.

16. RBC made a profit of approximately $69,034 from the forty-four improper allocations of new issue municipal bonds that the syndicate desk made to the flippers.

**RBC Improperly Used the Flippers to Obtain New Issue Bonds for its Inventory**

17. In addition, during the relevant period, RBC improperly acquired new issue municipal bonds for the firm's inventory by placing orders with the flippers to circumvent the lower priority that issuers typically assigned to non-syndicate dealer orders in offerings that it did not underwrite. When acquiring bonds for inventory, RBC was required to submit dealer orders directly to the underwriters offering the bonds. Instead, when RBC's municipal trading desk wanted new issue bonds for inventory, the traders directed the salesperson assigned to cover the flippers to place indications of interest for the bonds with the flippers. The salesperson placed the traders' indications of interest with the flippers when the salesperson knew or should have known that the flippers would attempt to fill these indications by placing customer orders with the underwriters, when these orders were actually dealer orders on behalf of RBC. When the flippers obtained the new issue bonds from the underwriters, they immediately sold or "flipped" the bonds to RBC, typically at a set markup. This practice improperly gave RBC orders higher priority in the bond allocation process than it would have been entitled to under the issuer priority rules that applied to these offerings.

18. During the relevant period, RBC obtained new issue bonds for inventory through the flippers on at least eighty-seven occasions. RBC made a profit of approximately $483,406 by reselling those bonds.

**RBC's Policies and Procedures**

19. RBC failed to adopt a reasonable system to implement the firm's written supervisory procedures ("WSPs") that was designed to achieve compliance with federal securities laws and applicable MSRB rules when the firm acted as sole underwriter or senior manager of an underwriting syndicate in new issue bond offerings. The Policy required the syndicate desk to allocate bonds according to the standard methodology, and give priority to all Customer orders and dealer orders over orders for the flippers in the absence of different instructions from issuers. However, as described above, the syndicate desk allocated oversubscribed bonds to orders for flippers ahead of institutional customer and dealer orders. RBC failed reasonably to implement the WSPs it had in place in order to address compliance with the Policy or the relevant MSRB rules by the firm's syndicate desk.

20. In addition, RBC's WSPs did not address circumvention of the priority provisions for new issue bond offerings to comply with federal securities laws and applicable MSRB rules when RBC bought new issue bonds for its inventory. RBC lacked policies and procedures with respect to how its registered representatives were to submit orders for RBC's account when RBC was not part of the underwriting syndicate. Under these circumstances, RBC failed to establish WSPs reasonably designed to prevent and detect violations by the firm's trading and sales desks relating to evasion of priority provisions.

## **Legal Discussion**

RBC Violated MSRB Rule G-17

21. MSRB Rule G-17 provides that, in the conduct of its municipal securities business, every broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. Negligence is sufficient to establish a violation of MSRB Rule G-17; no finding of scienter is required. *See Wheat, First Securities, Inc.*, Exch. Act Release No. 48378, 2003 WL 21990950, at *10 (Aug. 20, 2003).

22. As discussed above, RBC, through its registered representatives, allocated bonds to the flippers ahead of institutional customer and dealer orders in contravention of the standard methodology and submitted three orders on behalf of the flippers to RBC's syndicate desk when it knew that the orders did not satisfy the issuer's retail eligibility criteria for the offering. In addition, RBC, through its registered representatives circumvented issuer priority provisions of certain new issue bond offerings by placing orders with the flippers for RBC's inventory when it knew or should have known that the flippers would place higher priority customer orders for RBC.

23. By this conduct, RBC willfully[4] violated MSRB Rule G-17.

RBC Violated MSRB Rule G-11(k)

24. MSRB Rule G-11(k) provides that each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide in writing the following information relating to each order designated as retail submitted during a retail order period: (i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order is one for which a customer is already conditionally committed; (iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order.[5]

25. RBC, through its registered representatives, submitted three orders for the flippers in one offering for new issue bonds to RBC's syndicate desk, which was acting as senior syndicate manager, during the retail order period of the offering. The orders were

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[4] "Willfully," for purposes of imposing relief under Sections 15(b) and 15B of the Exchange Act "means no more than 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)).

[5] Rule G-11(k) further provides that the senior syndicate manager may rely on the information furnished by each broker, dealer, or municipal securities dealer that provided the information required by (i) - (v) unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate, or complete.

improperly designated as retail orders because they did not meet the issuer's eligibility criteria. RBC falsely certified that the orders met the issuer's eligibility criteria and affirmed their eligibility by providing zip codes, which were required by the issuer, that were not associated with the flippers.

26. By this conduct, RBC willfully violated MSRB Rule G-11(k).

RBC Failed Reasonably to Supervise
and to Establish an Adequate Supervisory System

27. Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to impose sanctions against a broker-dealer for failing reasonably to supervise a person subject to the firm's supervision who committed a securities law violation. A broker-dealer can be liable for failure to supervise either when it lacks procedures reasonably designed to prevent and detect the underlying violation, *see, e.g.*, *Smith Barney, Harris Upham & Co.*, Exch. Act Release No. 21813, 1985 WL 548567, at *3 (Mar. 5, 1985), or when it has failed to adopt a reasonable system to implement those procedures. *See, e.g.*, *A.G. Edwards & Sons, Inc.*, Exch. Act Release No. 55692, 2007 WL 1285761, at *4 (May 2, 2007).

28. MSRB Rule G-27(a) obligates brokers, dealers, and municipal securities dealers to "supervise the conduct of the municipal securities activities of the firm and its associated persons to ensure compliance with [MSRB] rules and the applicable provisions of the [Exchange] Act and rules thereunder." MSRB Rule G-27(b) obligates brokers, dealers, and municipal securities dealers to establish and maintain a system to supervise the municipal securities activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations and MSRB rules.

29. As described above, certain RBC registered representatives violated MSRB Rules G-11(k) and G-17 by circumventing established priority provisions in connection with the sale of new issue bonds to the flippers. RBC failed to adopt a reasonable system to implement its WSPs designed to achieve compliance by its registered representatives with MSRB Rules G-11(k) and G-17 in connection with these sales transactions.

30. As described above, certain RBC registered representatives also violated MSRB Rule G-17 by circumventing established priority provisions in connection with their purchases of new issue municipal bonds from the flippers. RBC lacked policies and procedures reasonably designed to prevent and detect these violations by its registered representatives.

31. Under the circumstances, RBC failed reasonably to supervise the municipal securities activities of its registered representatives to ensure compliance with the federal securities laws and MSRB Rules. As a result, RBC failed reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act, and willfully violated MSRB Rule G-27.

RBC Caused Violations of Section 15(a)(1) of the Exchange Act

32. To establish causing liability, the Commission must find: (1) a primary violation;

(2) the respondent's act or omission contributed to the violation; and (3) the respondent knew or should have known that its act or omission would contribute to the violation. *See* 15 U.S.C. § 78u-3(a); *Robert M. Fuller*, 80 SEC Docket 3539, 3545, Exch. Act Release No. 48406 (Aug. 25, 2003) (Commission Opinion).

33. Under Section 15(a)(1) of the Exchange Act, it is unlawful for a broker or dealer "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security … unless such broker or dealer is registered" with the Commission pursuant to Section 15(b) of the Exchange Act. Under Section 3(a)(4)(A) of the Exchange Act, a "broker" is "any person engaged in the business of effecting transactions in securities for the account of others." The Exchange Act's definition of "broker" "connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Serv., Inc. v. Sec. Inv. Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976); *see also SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

34. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter, such as Section 15(a)(1) of the Exchange Act; no proof of scienter is required. *See VanCook*, Exch. Act Release No. 61039A, 2009 WL 4005083, at *14 n.65 (Nov. 20, 2009) (Commission Opinion) (quoting *KPMG Peat Marwick LLP*, 54 SEC 1135, 1175 (2001)).

35. The flippers violated Section 15(a)(1) of the Exchange Act because they acted as brokers without being registered with the Commission. RBC's purchases of bonds through the flippers and payment of transaction-based compensation to them in connection with those transactions contributed to their violations. RBC, through its registered representatives, knew, or should have known, that the flippers were not registered with the Commission. As a result, RBC caused their direct violations of Section 15(a)(1) of the Exchange Act.

RBC Violated Section 15B(c)(1) of the Exchange Act

36. Section 15B(c)(1) of the Exchange Act prohibits a broker, dealer or municipal securities dealer from effecting interstate transactions in, or inducing or attempting to induce the purchase or sale of, any municipal security in contravention of any rule of the MSRB.

37. As a result of the negligent conduct described above and its willful violations of MSRB Rules G-11(k), G-17 and G-27, RBC willfully violated Section 15B(c)(1) of the Exchange Act.

## Disgorgement

38. The disgorgement and prejudgment interest ordered in paragraph IV.C. is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative. The disgorgement and prejudgment interest ordered in paragraph IV.C. shall be

transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

**RBC's Remedial Efforts**

39. In determining to accept the Offer, the Commission considered remedial acts promptly taken by RBC, including closing the accounts for the flippers; implementing additional surveillance measures to identify flipping activity and monitoring secondary market purchases to identify improper communications; and enhancing controls for delivery-versus-payment accounts.

**IV.**

On the basis 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), 15B(c), 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 Sections 15(a)(1) and 15B(c)(1) of the Exchange Act.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of $552,440 and prejudgment interest of $160,886.97 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 SEC Rule of Practice 600.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $150,000 to the Securities and Exchange Commission, of which a total of $37,500 shall be transferred to the MSRB in accordance with Section 15B(c)(9)(A) of the Exchange Act, and of which the remaining $112,500 shall be transferred to the general fund of the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. Payments must be made in one of the following ways:

(1) Respondent may transmit payments 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 RBC 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 Assistant Regional Director Kevin B. Currid, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

F. 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. Respondent shall not argue that it is entitled to, nor shall Respondent 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