

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100692 / August 12, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21991

In the Matter of

OTC LINK LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against OTC Link LLC (“OTC Link” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This proceeding concerns OTC Link's failure to monitor, investigate and file Suspicious Activity Reports ("SARs") between March 2020 and May 2023 (the "Relevant Period") relating to suspicious transactions conducted through its Alternative Trading System ("ATS") platforms known as OTC Link ATS, OTC Link ECN and OTC Link NQB (collectively, the "OTC Link ATS Platforms"). The OTC Link ATS Platforms only admit U.S. registered broker-dealers as subscribers and exclusively trade in Over-the-Counter ("OTC") securities, many of which are considered microcap or penny stock securities.²

2. As a registered broker-dealer, OTC Link was required to comply with the Bank Secrecy Act ("BSA") and its implementing regulations, which require OTC Link to file SARs relating to suspicious transactions conducted through the OTC Link ATS Platforms that OTC Link knew, suspected, or had reason to suspect involved the use of these trading platforms to facilitate fraudulent activity or that had no business or apparent lawful purpose. However, until June 2023, OTC Link failed to adopt or implement reasonably designed anti-money laundering ("AML") policies and procedures ("AML Policies") to surveil transactions conducted through the OTC Link ATS Platforms for possible red flags of suspicious activity.

3. Due to these deficiencies, OTC Link failed to surveil, investigate, or file SARs on numerous transactions that it had reason to suspect involved possible fraudulent activity or for which there was no business or apparent lawful purpose. In particular, during the Relevant Period, OTC Link failed to surveil for, recognize and investigate red flags of: (a) sell orders from subscribers representing a large volume of trading relative to the average daily trading volume in thinly-traded microcap issuers; (b) consistent one-sided trading by a subscriber in a particular thinly-traded microcap issuer accompanied by a significant increase in stock price; (c) trading activity by subscribers involving apparent pre-arranged securities trading, including wash or cross trades, in thinly-traded microcap securities; or (d) transactions involving subscribers who were publicly known to be the subject of criminal, civil or regulatory actions for crime, corruption, or misuse of

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.

² "OTC securities" are securities that are not listed on a national securities exchange. The securities at issue here are primarily microcap and penny stock securities. The term "microcap stock" generally refers to securities issued by companies with a market capitalization of less than \$250 to \$300 million. The term "penny stock" generally refers to a security issued by a very small company that trades at less than \$5 per share. See <https://www.investor.gov/introduction-investing/investing-basics/glossary/microcap-stock>; Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder.

public funds. As a result, OTC Link failed to file numerous SARs and, accordingly, willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

Respondent and Relevant Entities

4. **OTC Link** is a Delaware limited liability company with its principal place of business in New York, New York. OTC Link is an indirect, wholly-owned subsidiary of OTC Markets Group, Inc. It has been registered with the Commission as a broker-dealer since 2012. OTC Link's sole line of business is its operation of three ATS platforms: OTC Link ATS, OTC Link ECN and OTC Link NQB.

5. **OTC Link ATS** is an ATS operated by OTC Link for OTC securities. In 2012, OTC Link ATS noticed its operations as an ATS by filing a Form ATS initial operation report with the Commission. OTC Link ATS operates as a Qualified Interdealer Quotation System ("IDQS"). OTC Link ATS provides a fully attributable, network-based model for quoting and facilitating transactions in OTC securities that publishes broker-dealer quotations, delivers trade messages, and allows subscribers to execute or negotiate trades with known counterparties. OTC Link ATS is not a national securities exchange or self-regulatory organization.

6. **OTC Link ECN** is an ATS operated by OTC Link for OTC securities. Launched in 2017, OTC Link ECN operates pursuant to a Form ATS on file with the Commission as an Electronic Communication Network and provides subscribers with anonymous order matching functionality. OTC Link ECN is not a national securities exchange or self-regulatory organization.

7. **OTC Link NQB** is an ATS operated by OTC Link for OTC securities. Launched in 2021, OTC Link NQB operates pursuant to a Form ATS on file with the Commission as an IDQS with an order matching functionality. OTC Link NQB is not a national securities exchange or self-regulatory organization.

Background

8. The BSA and implementing regulations promulgated by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") require broker-dealers such as OTC Link to file SARs with FinCEN to report, among other things, a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating funds or other assets of at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activities or was intended or conducted to disguise or hide funds or assets derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves the use of the broker-dealer to facilitate criminal activity. *See* 31 C.F.R. § 1023.320(a)(2) (the "SAR Rule").

9. To be liable for failing to file a SAR, a broker-dealer must know, suspect, or have reason to suspect that a transaction falls into one of the four categories of suspicious activity in 31 C.F.R. § 1023.320(a)(2). The Financial Industry Regulatory Authority (“FINRA”) and FinCEN have longstanding regulatory guidance highlighting red flags related to penny stock transactions and FINRA has cautioned firms that its examples of red flags are “merely illustrative” and that other situations may arise that require further investigation. *See* FinCEN’s The SAR Activity Review Trends Tips & Issues, Issue 15, “In Focus: The Securities and Futures Industry;” FINRA’s Updated Small Firm Template Anti-Money Laundering (AML) Program (updated January 2010); FINRA Regulatory Notice 09-05 (Jan. 2009). In May 2019, FINRA issued Regulatory Notice 19-18, which included a list of previously identified red flags and provided additional examples of red flags potentially indicative of suspicious activity, including examples of manipulative trading of microcap and penny stock securities. FINRA Regulatory Notice 19-18 (May 2019), at 3–11.

10. The BSA and its implementing regulations require the filing of a SAR no later than 30 calendar days after the date of the broker-dealer’s initial detection of facts that may constitute a basis for filing a SAR. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. 31 CFR § 1023.320(b).

11. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR, including continuing activity SARs, as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. *See SEC v. Alpine Sec. Corp.*, 308 F. Supp. 3d 775, 798–800 (S.D.N.Y. 2018), *aff’d*, 982 F.3d 68 (2d Cir. 2020), *cert. denied*, *Alpine Sec. Corp. v. SEC*, No. 19-3272, 595 U.S. ____ (2021).

Facts

12. OTC Link has operated OTC Link ATS since 2012, OTC Link ECN since 2017 and OTC Link NQB since 2021, all of which are among the largest ATSs for trading OTC securities in the United States. As an operator of ATSs for OTC securities, OTC Link plays a significant role in executing trades of microcap and penny stock securities. Microcap and penny stock securities tend to be high-risk securities because they typically have no minimum listing standards, lack liquidity, and have high volatility, and because there is often a lack of public information available about these securities. OTC Link ECN and OTC Link NQB act as the executing party on an agency basis in relation to all transactions executed on these platforms, whereas OTC Link ATS facilitates transactions through, among other things, the publishing of quotes and delivery of trade-related messages. Despite tens of thousands of higher risk microcap and penny stock securities transactions conducted daily through the OTC Link ATS Platforms, during the Relevant Period, OTC Link failed to establish a reasonably designed AML surveillance program for its transactions, which resulted in its failure to file SARs during the Relevant Period in connection with numerous suspicious transactions.

13. During the Relevant Period, OTC Link's AML department consisted of its Chief Compliance Officer, who was also designated as the Anti-Money Laundering Compliance Officer (the "AMLCO"), and a junior-level Compliance Associate. OTC Link's AML Policies specified that the AMLCO was responsible for, among other things, monitoring the firm's compliance with its AML obligations and for filing SARs. Between at least January 1, 2020 and June 30, 2021, the AMLCO allocated only approximately two hours per month to the oversight of OTC Link's AML program.

14. OTC Link's AML Policies during the Relevant Period stated that "since the Firm does not handle customer orders, it focuses its oversight of red flags and suspicious activity efforts into the activity of the FINRA Member Broker Dealers arranging transactions through the Firm's ATSs." Although OTC Link's AML Policies specified certain "red flags" indicative of suspicious activity relating to potential microcap fraud, there was no reference to any red flags associated with other risks relevant to OTC Link's business, including: (a) sell orders from subscribers representing a large volume of trading relative to the average daily trading volume in thinly-traded microcap issuers; (b) consistent one-sided trading by a subscriber in a particular thinly-traded microcap issuer accompanied by a significant increase in stock price; (c) trading activity by subscribers involving apparent pre-arranged securities trading, including wash or cross trades, in thinly-traded microcap securities; or (d) transactions involving subscribers who were publicly known to be the subject of criminal, civil or regulatory actions for crime, corruption, or misuse of public funds. Additionally, OTC Link's AML Policies provided that "[s]ince the firm does not have customer information or insight into the client (or retail broker) entering orders the firm is somewhat limited in its ability to identify fraud."

15. During the Relevant Period, OTC Link failed to surveil the vast majority of transactions conducted through the OTC Link ATS Platforms for red flags of potentially suspicious conduct concerning, among other things, the following types of potentially unlawful, manipulative transactions (*see* FINRA Regulatory Notice 19-18 (May 2019), FINRA Regulatory Notice 09-05 (Jan. 2009)):

- a. Trading activity involving a significant proportion of the daily trading volume in a thinly traded or low-priced security;
- b. Trading activity involving a sudden spike in investor demand for, coupled with a rising/decreasing price in, a thinly-traded or low-priced security;
- c. Trading activity involving pre-arranged or other non-competitive securities trading, including wash or cross trades, with no apparent business purpose ("pre-arranged or wash trading"); or
- d. Transactions involving subscribers who were publicly known to be the subject of criminal, civil or regulatory actions for crime, corruption, or misuse of public funds.

16. In addition, although OTC Link used automated surveillance to identify other forms of potentially suspicious trading activity conducted through the OTC Link ATS Platforms, it did not allocate sufficient compliance and operations resources to review the vast majority of these alerts generated from its automated surveillance system.

17. Specifically, OTC Link did not devote sufficient resources to review the alerts generated by its automated surveillance system. For example, between January 1, 2020 and June 30, 2021, OTC Link's automated surveillance system generated 1,862 alerts averaging 310 alerts per month. The AMLCO and Compliance Associate who were responsible for reviewing the trading alerts and devoted only approximately five hours per month towards this task, and none of these alerts resulted in further AML review or investigation by OTC Link.

18. During the Relevant Period, OTC Link failed to investigate red flags or file any SARs in connection with numerous instances of suspicious manipulative trading activity conducted through the OTC Link ATS Platforms involving: (a) a large volume of thinly-traded, low-priced securities; (b) a sudden spike in investor demand for, coupled with a rising or decreasing price in, thinly-traded, low-priced securities; (c) suspicious manipulative, pre-arranged or wash trading activity; and/or (d) subscribers who were publicly known to be the subject of criminal, civil or regulatory actions for crime, corruption, or misuse of public funds.

19. If OTC Link had in place reasonably designed AML Policies to surveil transactions conducted through its OTC Link ATS Platforms for red flags regarding potential suspicious trading activity during the Relevant Period, it would have identified the above-referenced suspicious transactions concerning potentially unlawful and manipulative trading (including possible spoofing, layering, wash trading, pre-arranged trading, and sudden spikes in volume coupled with significant volatility) that would have required the filing of numerous SARs.

20. Further, after OTC Link told Enforcement staff that it had identified seven separate instances of suspicious activity that warranted the filing of SARs during the Relevant Period, it failed to file corresponding SARs in a timely manner due to an oversight by its operations staff. In fact, OTC Link did not file SARs reflecting this suspicious activity until Enforcement staff inquired about their whereabouts. These failures further demonstrate the lack of resources dedicated to ensuring an adequate AML surveillance program.

21. As a result of OTC Link's failure to have or implement reasonably designed AML Policies to surveil transactions conducted through the OTC Link ATS Platforms for possible red flags regarding suspicious activity, the firm failed to identify and investigate suspicious activity and ultimately failed to file a single SAR during the Relevant Period in connection with numerous transactions that it should have had reason to suspect involved possible fraudulent activity or had no business or apparent lawful purpose.

OTC Link's Remedial Efforts

22. In determining to accept the Offer, the Commission considered remedial acts undertaken by OTC Link and cooperation afforded the Commission staff.

23. In response to comments that OTC Link received from the Commission's Division of Examinations in March 2022, between May 2022 and May 2023, OTC Link expanded the alert criteria for its automated surveillance system by lowering sale volume thresholds for both subscribers with disciplinary history and for potential illegal unregistered distributions and has begun filing SARs relating to such activities.

24. In October 2023, OTC Link retained a third-party compliance consultant ("Compliance Consultant") to conduct a review of its compliance program and make recommendations to improve its AML Policies.

25. In October 2023, OTC Link added two additional members to its AML compliance team to assist with its AML surveillance efforts.

Undertakings

Respondent has undertaken to:

26. Continue its retention of the Compliance Consultant to conduct a comprehensive review of OTC Link's AML Policies relating to the monitoring and reporting of suspicious transactions across the three OTC Link ATS Platforms. OTC Link shall exclusively bear all costs, including compensation and expenses, associated with the retention of the Compliance Consultant.

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

28. OTC Link shall require the Compliance Consultant to submit to the Commission's staff a certification stating whether OTC Link cooperated with the Compliance Consultant with every report submitted. The certification and supporting material shall be submitted along with each required report to Sandeep Satwalekar, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.

29. OTC Link shall require the Compliance Consultant to conduct, at the end of the second and fourth quarters after the date of the entry of this Order, comprehensive reviews of the effectiveness and implementation of OTC Link's AML Policies (each, an "Interim Review"). OTC Link shall require the Compliance Consultant to provide OTC Link with any recommendations for changes or improvements to the effectiveness and implementation of its AML Policies as the Compliance Consultant deems appropriate during any Interim Review and prior to the issuance of reports required in paragraphs 30, 31, and 34, below.

30. OTC Link shall require, within thirty (30) days from the completion of the first Interim Review, the Compliance Consultant to submit a written and detailed report to OTC Link and the Commission staff (the “Semi-Annual Report”). The Semi-Annual Report will describe the first Interim Review, the names of the individuals who performed the Interim Review, the conclusions reached, any recommendations by the Compliance Consultant for changes in or improvements to OTC Link’s AML Policies and/or OTC Link’s implementation thereof, and the status of OTC Link’s adoption of such recommendations by the Compliance Consultant or failure to cooperate with reasonable requests to access its files, books, records, or personnel.

31. OTC Link shall require, within thirty (30) days from the completion of the second Interim Review, the Compliance Consultant to submit a written and detailed report to OTC Link and the Commission staff (the “Anniversary Report”). The Anniversary Report will describe the second Interim Review, the names of the individuals who performed the Interim Review, the conclusions reached, any recommendations by the Compliance Consultant for changes in or improvements to OTC Link’s AML Policies and/or OTC Link’s implementation thereof, and the status of OTC Link’s adoption of such recommendations by the Compliance Consultant or failure to cooperate with reasonable requests to access its files, books, records, or personnel.

32. OTC Link shall adopt all recommendations contained in the Semi-Annual Report and the Anniversary Report within forty-five (45) days of the date of each report; provided, however, that within thirty (30) days after the date of each report, OTC Link shall in writing advise the Compliance Consultant and the Commission staff of any recommendations that OTC Link considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that OTC Link considers to be unduly burdensome, impractical, or inappropriate, OTC Link need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

33. As to any recommendation on which OTC Link and the Compliance Consultant do not agree, OTC Link shall attempt in good faith to reach an agreement with the Compliance Consultant on an alternative proposal within sixty (60) days after the date of the Semi-Annual Report or Anniversary Report, as applicable. Within fifteen (15) days after the conclusion of the discussion and evaluation by OTC Link and the Compliance Consultant, OTC Link shall require that the Compliance Consultant inform OTC Link and the Commission staff in writing of the Compliance Consultant’s final determination concerning any recommendation objected to by OTC Link. OTC Link shall abide by the determinations of the Compliance Consultant and, within thirty (30) days after final agreement between OTC Link and the Compliance Consultant or final determination of the Compliance Consultant, whichever occurs first, OTC Link shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

34. Within thirty (30) days of OTC Link’s adoption of all of the recommendations in the Anniversary Report that the Compliance Consultant deems appropriate, OTC Link shall require the Compliance Consultant to submit a written final report to OTC Link and the Commission staff

(the “Final Report”). The Final Report will (1) describe how OTC Link has adopted and implemented the Compliance Consultant’s recommendations, if any, from the Semi-Annual Report and Anniversary Report; (2) certify that the Compliance Consultant agrees with OTC Link’s adoption and implementation of its recommendations, if any; and (3) include an opinion of the Compliance Consultant on whether the AML Policies, and OTC Link’s implementation thereof, are reasonably designed to prevent violations of the federal securities laws by OTC Link and its employees.

35. For the remainder of the engagement, OTC Link: (1) shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the Compliance Consultant without the prior written approval of the Commission staff; and (2) shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

36. OTC Link shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Compliance Consultant, or any of its present or former affiliates, directors, officers, employees, or agents acting in these capacities, for a period of two years from completion of the engagement.

37. The Semi-Annual Report, Anniversary Report and Final Report will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of a report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission’s discharge of its duties and responsibilities, or (4) as otherwise required by law.

38. Certification. OTC Link undertakes to certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Sandeep Satwalekar, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

39. Recordkeeping. OTC Link shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of its compliance with the undertakings set forth herein.

40. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in

calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

Violations

41. As a result of the conduct described above, OTC Link willfully³ violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with the reporting, record keeping, and record retention requirements of the BSA, including filing SARs as required by the SAR Rule, 31 C.F.R. § 1023.320.

IV.

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

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

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

B. Respondent OTC Link is censured.

C. Respondent OTC Link shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$1,190,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

³ “Willfully,” for purposes of imposing relief under Section 15(b) 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)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

- (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 OTC Link 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 Sandeep Satwalekar, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent shall comply with the undertakings enumerated in paragraphs 26 through 40 above.

By the Commission.

Vanessa A. Countryman
Secretary