

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2727 / April 24, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28253 / April 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13019

In the Matter of

Gabelli Funds LLC,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF 1940 AND
SECTIONS 9(b) AND 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission (the “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 203(e) and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the “Investment Company Act”) against Gabelli Funds LLC (“Gabelli Funds” or the “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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to

Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the “Order”), as set forth below.

III.

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

Overview

This is a proceeding against Gabelli Funds, an investment adviser to mutual funds, based upon its undisclosed market-timing agreement in which it permitted a hedge fund investment manager based in the United Kingdom (the “U.K. hedge fund manager”) to market time a mutual fund managed by Gabelli Funds from September 1999 to August 2002 while Gabelli Funds otherwise monitored for and rejected market-timing purchases from other investors of the mutual fund. Approximately six months after the market timing commenced, Gabelli Funds also allowed the U.K. hedge fund manager to increase its market-timing capacity in exchange for the U.K. hedge fund manager’s long-term investment in an affiliated hedge fund.

Market timing of mutual funds includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm mutual fund shareholders because it can (a) dilute the value of their shares if the market timer is exploiting pricing inefficiencies, (b) disrupt the management of the mutual fund’s investment portfolio, and/or (c) cause the targeted mutual fund to incur considerable extra costs associated with the excessive trading which are borne by other shareholders.

From September 1999 until August 2002 (the “relevant period”), Gabelli Funds allowed the U.K. hedge fund manager to market time the Gabelli Global Growth Fund (“GGGF” or “the Fund”) on behalf of a hedge fund managed by the U.K. hedge fund manager.² In April 2000, Gabelli Funds permitted the U.K. hedge fund manager to increase the amount of money it could use to make market-timing trades in GGGF in exchange for a \$1 million investment in the Gabelli Global Partners Fund (“Global Partners Fund”), a hedge fund advised by a Gabelli Funds affiliate. The same portfolio manager managed both GGGF and the Global Partners Fund. Gabelli Funds permitted the U.K. hedge fund manager’s market timing even though it was inconsistent with Gabelli Funds’ practice, as disclosed to the Gabelli Global Series Board of Directors,³ 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 GGGF was called the Gabelli Global Interactive Couch Potato Fund until January 13, 2000 when its name was changed to Gabelli Global Growth Fund. The Fund’s name was changed again on November 16, 2005 to GAMCO Global Growth Fund.

³ GGGF is part of the Gabelli Global Series.

monitoring for market timing in its funds and taking steps to stop market timing, including barring market timers.

During the relevant period, the U.K. hedge fund manager executed approximately 399 round-trip market-timing trades in GGGF with an aggregate volume of approximately \$4.2 billion, while GGGF's net assets during that period ranged from approximately \$100.2 million to \$563 million. On 115 days, the accounts managed by the U.K. hedge fund manager had an aggregated investment in GGGF that exceeded three percent of GGGF's total outstanding shares. The frequent trading was detrimental to the long-term shareholders of GGGF. While the U.K. hedge fund manager's three accounts earned internal rates of return from its trading in GGGF of 185 percent, 160 percent, and 73 percent respectively during the relevant period, GGGF had an internal rate of return during the same period of negative 24.1 percent. The U.K. hedge fund manager's trading was so extensive that approximately 62 percent of the total dollar value of all purchases and redemptions in GGGF during the relevant period were short-term trades by the U.K. hedge fund manager.

Gabelli Funds financially benefited from the U.K. hedge fund manager's market timing in that it earned advisory fees from both the market-timing investment in GGGF and the U.K. hedge fund manager's investment in the Global Partners Fund. Gabelli Funds failed to disclose to GGGF's Board of Directors the market-timing arrangement which conflicted with Gabelli Funds' obligation to act in the best interests of GGGF, thereby breaching Gabelli Funds' fiduciary duty to GGGF.

By virtue of its conduct, Gabelli Funds willfully violated Section 206(2) of the Advisers Act, Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1, and willfully aided and abetted and caused violations by GGGF of Section 12(d)(1)(B)(i) of the Investment Company Act.

Respondent

1. Gabelli Funds LLC, a New York limited liability company located in Rye, New York, is registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act. It is the investment adviser to all mutual funds and closed-end funds within the Gabelli complex of funds. As of September 30, 2007, Gabelli Funds had approximately \$16.9 billion in assets under management. It is a wholly-owned subsidiary of GAMCO Investors Inc., a New York corporation whose stock trades on the New York Stock Exchange and whose total assets under management exceed \$30 billion.

Other Relevant Entities

2. GGGF is an open-end investment company registered under the Investment Company Act. Its primary investment objective was to provide investors with appreciation of capital. During the relevant period, GGGF's prospectus did not explicitly prohibit market timing. Under normal market conditions, the Fund endeavored to invest at least 65 percent of its total assets in common stock of companies involved in

the global marketplace; during the relevant period, it invested approximately 36 to 57 percent of its total assets in non-North American securities. As of December 31, 2007, GGGF had approximately \$107.3 million in net assets.

3. The Global Partners Fund is a Cayman Islands Exempted Company incorporated in the Cayman Islands on April 16, 1999. It offers two classes of shares. Each class is issued in series; a new series is issued on each date the fund permits subscriptions for shares. The fund's principal investment objective is to achieve above-average capital growth through investments in securities and other instruments. It is not registered with the Commission as an investment company. Its adviser receives a fixed net asset-based advisory fee set at an annual aggregate rate of 1.5 percent of the fund's average daily net asset value, and a performance based fee set at 20 percent of the appreciation of each series' net asset value each year.

The Market Timing

4. In September 1999, Gabelli Funds allowed the U.K. hedge fund manager to begin making market-timing trades in GGGF. Gabelli Funds permitted the U.K. hedge fund manager to use two accounts to make market-timing trades with up to \$5 million at any one time. By early April 2000, Gabelli Funds permitted the U.K. hedge fund manager to increase its investment in GGGF, and the amount with which it made market-timing trades, to \$7 million.

5. In April 2000, Gabelli Funds permitted the U.K. hedge fund manager to use a third account to increase its market-timing capacity in GGGF to \$20 million, approximately four percent of GGGF's assets at that time. The increased capacity was given in exchange for an investment in Global Partners Fund, an affiliated, newly-formed hedge fund which GGGF's portfolio manager also managed. On April 17, 2000, a trader for the U.K. hedge fund manager confirmed to Gabelli Funds via e-mail that the U.K. hedge fund manager would begin using the increased market-timing capacity on April 24, 2000. The next day, April 18, the U.K. hedge fund manager confirmed by e-mail that it would also make the investment in the Global Partners Fund on April 24, the same day it anticipated it would begin to use the increased market-timing capacity. On April 25, the U.K. hedge fund manager transferred \$1 million to Gabelli to fund its investment in the Global Partners Fund effective on May 1.

6. The Global Partners Fund was incorporated in April 1999 and received its first investments in July 1999. As of May 1, 2000, the U.K. hedge fund manager's \$1 million investment constituted approximately four percent of the Global Partners Fund's \$24.7 million in net assets.

The Market Timing and Its Harm to GGGF Shareholders

7. From April 24, 2000 until the spring of 2002, the U.K. hedge fund manager regularly market timed between \$15 million and \$20 million in GGGF. During this time period, the assets in the U.K. hedge fund manager's three accounts comprised between four and 15 percent of GGGF's net assets, and the dollar amount of its market-

timing trades accounted for approximately 62 percent of the total dollar value of the trading activity in GGGF.

8. Beginning around December 2000, while the U.K. hedge fund manager was being allowed to market time GGGF, Gabelli Funds began excluding other market timers from the Fund. In rejecting other purchases in GGGF that it identified as market timing, Gabelli Funds relied on the statement in the Gabelli Global Series prospectus, of which GGGF was a part, that “[t]he Funds reserve the right to . . . reject any purchase order if, in the opinion of the Funds’ management, it is in the Funds’ best interest to do so.” Gabelli Funds also informed market timers whose purchases were rejected that “[m]arket timing can negatively affect the mutual fund investment process. Excessive and unpredictable trading hinders a fund manager’s ability to pursue the fund’s long-term goals. . . . We regret the need to place this restriction, but we feel it is in the best overall interest of the Fund’s shareholders.”

9. Gabelli Funds had internal procedures designed to identify and prevent market timing whereby its employees routinely reviewed purchases and exchanges in GGGF and rejected purchases or exchanges that appeared to be market timing. However, the U.K. hedge fund manager’s three accounts were identified to these employees and they were instructed not to reject purchases or exchanges in these three accounts.

10. The average size of a rejected purchase was approximately \$283,000 and Gabelli Funds employees reviewed purchases as small as \$100,000. In contrast, the U.K. hedge fund manager was trading between \$5 million and \$20 million in GGGF on any given day, but its purchases were not rejected by Gabelli Funds.

11. In April 2002, Gabelli Funds’ COO unsuccessfully attempted to limit the U.K. hedge fund manager’s market-timing investment in GGGF to approximately three percent of GGGF’s total outstanding shares. At the time, its market-timing investment in GGGF was more than 10 percent of GGGF’s total outstanding shares. The U.K. hedge fund manager’s market-timing investment in one of its accounts was reduced, but Gabelli Funds continued to allow the U.K. hedge fund manager to invest and make market-timing trades totaling about 10 percent of GGGF’s total outstanding shares, or \$16 million.

12. On April 19, 2002, just weeks after Gabelli Funds had limited its market-timing capacity, the U.K. hedge fund manager asked to redeem approximately 50 percent of its \$1 million investment in the Global Partners Fund. The redemption occurred on May 1, 2002.

13. On August 7, 2002, Gabelli Funds notified the U.K. hedge fund manager that it had decided to eliminate market timing in its funds and, accordingly, would allow only redemptions in the U.K. hedge fund manager’s three accounts. Gabelli Funds also explained that it would not accept trading in an additional account in which the U.K. hedge fund manager sought to market time GGGF. Two weeks later, on August 20, 2002, the U.K. hedge fund manager requested a redemption of its remaining \$500,000 investment in the Global Partners Fund.

14. An internal analysis Gabelli Funds prepared around August 15, 2002, showed that the U.K. hedge fund manager's trading had a negative impact on GGGF shareholders. The analysis showed that from January 2002 to August 2002, the U.K. hedge fund manager realized a profit of \$2,063,011 resulting in a 13.36 percent return on 33 round trip investments averaging \$15.4 million and that this trading diminished GGGF's assets by 1.32 percent. A subsequent analysis found that from late 1999 to August 2002 the U.K. hedge fund manager's internal rates of return from trading in GGGF in its three accounts were, respectively, 185 percent, 160 percent, and 73 percent, while GGGF's internal rate of return was a negative 24.1 percent. The U.K. hedge fund manager's profit over the entire market-timing period was approximately \$9.7 million.

Gabelli Funds Failed to Disclose That the U.K. Hedge Fund Manager Market Timed GGGF

15. On February 21, 2001, Gabelli Funds reported to GGGF's Board of Directors that efforts were being made to identify market-timing accounts and restrict them from purchasing the Fund. However, Gabelli Funds did not disclose to the Board that there was an authorized market timer. In fact, while the U.K. hedge fund manager was market timing GGGF, Gabelli Funds did not disclose to GGGF's Board of Directors that the U.K. hedge fund manager was allowed to market time the Fund while other investors were blocked from doing so, that the U.K. hedge fund manager had also made an investment in the Global Partners Fund in exchange for increased timing capacity, or that the U.K. hedge fund manager's market timing had a detrimental impact on GGGF's long-term shareholders.

Violations

16. As a result of the conduct described above, Gabelli Funds willfully⁴ violated Section 206(2) of the Advisers Act. Section 206(2) prohibits an investment adviser from engaging in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Notwithstanding that it had an internal *de facto* policy to reject market-timing purchases in the Global Series funds and that it had told the Board of Directors that it was taking steps to block market timing, Gabelli Funds allowed the U.K. hedge fund manager to market time GGGF and failed to disclose to the Board of Directors the market-timing arrangement with the U.K. hedge fund manager, that the U.K. hedge fund manager's investment in the Global Partners Fund was made in exchange for increased market-timing capacity, or the detrimental effects of the U.K. hedge fund manager's market timing on GGGF shareholders. As a result, Gabelli Funds breached its fiduciary duty and violated Section 206(2).

⁴ A willful violation of the securities laws means merely "that the person charged with the violation 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)).

17. As a result of the conduct described above, Gabelli Funds, an affiliated person of GGGF, willfully violated Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1. Section 17(d) prohibits any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe. Section 17(d) of the Act is intended to limit or prevent participation by such registered company on a basis different from or less advantageous than that of another participant. Rule 17d-1 under the Act prohibits any affiliated person from participating in any joint arrangement unless it obtains an order from the Commission approving the transaction. Gabelli Funds, an affiliated person of GGGF, acting as principal, entered into a joint arrangement with GGGF, without seeking or obtaining approval from the Commission, whereby it permitted the U.K. hedge fund manager to market time GGGF in exchange for an investment in the Global Partners Fund.⁵

18. As a result of the conduct described above, Gabelli Funds willfully aided and abetted and caused repeated violations by GGGF of Section 12(d)(1)(B)(i) of the Investment Company Act, which prohibits any registered investment company from knowingly selling more than three percent of its total outstanding shares to any other investment company.⁶ On 115 separate occasions, Gabelli Funds knowingly sold shares to a hedge fund managed by the U.K. hedge fund manager, after which the hedge fund owned more than three percent of the total outstanding shares of GGGF.

19. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission Staff.

Undertakings

20. *Distribution of Disgorgement and Civil Money Penalty.* Respondent has undertaken as follows:

⁵ In 1988, Gabelli Funds' predecessor, Gabelli Funds, Inc., and parent company, GAMCO Investors, Inc., consented to an Order Instituting Proceedings Pursuant to Section 15(c) of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act and Findings, Opinion, and Order of the Commission, which, among other things, found Gabelli Funds' predecessor and parent company willfully violated Section 17(d) of the Investment Company Act and Investment Company Act Rule 17(d)-1 by seeking a leveraged buyout transaction with an entity in which certain Gabelli-affiliated investment companies had an investment, and ordered Gabelli Funds' predecessor and parent company to comply with Section 17(d) and Rule 17d-1, retain outside counsel to review their procedures with respect to Section 17(d) and Rule 17d-1, and prepare reports including recommendations to ensure future compliance with Section 17(d) and Rule 17d-1. *In the Matter of The Gabelli Group, Inc., et. al.*, Exchange Act Rel. No. 16527 (Aug. 17, 1988).

⁶ Section 12(d)(1)(B)(i) of the Investment Company Act applies to the sale of more than three percent of a registered open-end fund's total outstanding voting securities to any investment company, whether registered or unregistered. The provision also applies to issuers relying on an exclusion from the definition of "investment company" pursuant to Section 3(c)(1) and/or Section 3(c)(7).

a. Respondent shall retain, within 60 days of the date of entry of the Order, the services of an Independent Distribution Consultant acceptable to the staff of the Commission and acceptable to the independent directors of GGGF. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by Respondent, including, but not limited to (i) the compensation of a tax administrator for the preparation of tax returns and/or for seeking any IRS ruling, and (ii) payment of any distribution or consulting services as may be reasonably required by the Independent Distribution Consultant. The payment of taxes, if any, by the Settlement Fund shall be paid from any amounts of disgorgement or penalty paid by the Respondent pursuant to this Order, and any investment returns or interest earned thereon.

b. Respondent shall require the Independent Distribution Consultant to develop a Distribution Plan for the distribution of the payments ordered in paragraph IV.C. of this Order to the shareholders of GGGF to compensate those shareholders fairly and proportionately for the harm caused to them by the market-timing trading activity during the relevant period, according to a methodology developed in consultation with Respondent and the independent directors of GGGF and acceptable to the staff of the Commission. Any residual funds remaining after the shareholders have been fairly and proportionately compensated shall be remitted to the United States Treasury.

c. Respondent shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested.

d. Respondent shall require the Independent Distribution Consultant to submit to Respondent and the staff of the Commission the Distribution Plan no more than 120 days after the date of entry of the Order.

e. With respect to any determination or calculation of the Independent Distribution Consultant with which Respondent or the staff of the Commission does not agree, such parties shall attempt in good faith to reach an agreement within 150 days of the date of entry of the Order. In the event that Respondent and the staff of the Commission are unable to agree on an alternative determination or calculation, within 180 days of the date of entry of the Order, they shall each advise, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that each considers to be inappropriate and state in writing the reasons for considering such determination or calculation inappropriate.

f. Within 195 days of the date of entry of this Order, Respondent shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to the Commission's Rules of Practice. Following a Commission order approving a final plan of disgorgement, as provided in the Rules of Practice,

Respondent shall require that the Independent Distribution Consultant, with Respondent, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

g. Respondent shall require the Independent Distribution Consultant to enter into an agreement that provides that, for the period of the engagement and for a period of two years from completion of the engagement, the Independent Distribution Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former subsidiaries, affiliates, trustees, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Distribution Consultant will require that any firm with which the Independent Distribution Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Independent Distribution Consultant in performance of his or her duties under the Order shall not, without prior written consent of the independent directors of Respondent and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of its present or former subsidiaries, affiliates, trustees, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

h. For good cause shown, the staff of the Commission may alter any of the procedural deadlines set forth above.

21. *Ongoing Cooperation.* Respondent shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent agrees:

a. To produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff;

b. To use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission's staff at such time as the staff reasonably may direct;

c. To use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

d. That in connection with any testimony of Respondent's officers, employees, and directors to be conducted at deposition, hearing or trial pursuant

to a notice or subpoena, Respondent:

- i. Agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony may be served by regular mail on: Harry J. Weiss, Esq., WilmerHale LLP, 1875 Pennsylvania Avenue, NW, Washington DC 20006, with a copy to Gabelli Funds, LLC, One Corporate Center, Rye, NY 10580, Attn: General Counsel.
- ii. Agrees that any such notice or subpoena for Respondent's officers', employees' and directors' appearance and testimony in any action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent Gabelli Funds LLC is censured.
- B. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) of the Investment Advisers Act, Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1, and Section 12(d)(1)(B)(i) of the Investment Company Act.
- C. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of \$9,700,000, prejudgment interest of \$1,300,000 and a civil money penalty of \$5,000,000, for a total payment of \$16,000,000 to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Gabelli Funds LLC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Christopher Conte, Esq., Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-4631.
- D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest, and penalties referenced in paragraph IV.C.

above. Regardless of whether any such Fair Fund distribution is made, 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 it shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 Paragraph III.20 above.

By the Commission.

Nancy M. Morris
Secretary