

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 67808 / September 10, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3460 / September 10, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-15014

In the Matter of

**JP TURNER & COMPANY,
LLC, and WILLIAM L. MELLO**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against JP Turner & Company, LLC (“JP Turner”) and pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against William L. Mello (“Mello”) (Collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting

Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

These proceedings arise out of failure reasonably to supervise three registered representatives (the “Registered Representatives”) with a view to preventing and detecting their violations of federal securities laws by JP Turner and Mello, then President of the firm. Between January 1, 2008 and December 31, 2009 (the “relevant period”), for the purpose of generating commission business, these registered representatives “churned” the accounts of seven customers (collectively, the “affected customers”) by engaging in excessive trading in disregard of the customers’ investment objectives and financial needs. Consequently, these customers paid approximately \$845,000 in commissions, fees and margin interest to JP Turner. During the relevant period, Mello, as President of JP Turner, was ultimately responsible for establishing JP Turner’s supervisory policies and procedures, and a system to implement these policies and procedures designed to prevent and detect violations by the firm’s registered representatives of the securities laws, rules and regulations. JP Turner and Mello failed to establish procedures and systems reasonably designed to prevent and detect the churning of customer accounts. Although JP Turner had a monitoring system to identify actively traded accounts based primarily on “return on investment” (“ROI”) levels, *i.e.*, the level of fees and commissions as a percentage of account equity, the system imposed few requirements on, and no meaningful guidance for supervisors in terms of reviewing these accounts and taking meaningful action to investigate the trading activity.

Respondents

1. JP Turner is an Atlanta, Georgia-based limited liability company that has been registered with the Commission as a broker-dealer since 1997. JP Turner has approximately 513 independent contractor registered representatives working out of over 203 branch offices that are located throughout the United States. These branch offices, organized as licensees, include 54 offices of supervisory jurisdiction.

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

2. Mello, age 63, is a resident of Georgia. Mello co-founded JP Turner in 1997 and at all relevant times served as President of the firm. He is also a substantial stakeholder of the firm. In addition, Mello at all relevant times served as President of JP Turner & Company Capital Management, LLC, an Atlanta, Georgia-based limited liability company that has been registered with the Commission as an investment adviser since 2007.

Facts

JP Turner's Supervisory Structure

3. For JP Turner's offices of supervisory jurisdiction ("OSJ"), the registered representatives were directly supervised by branch managers, who in turn reported to, and were supervised by an area vice president ("AVP"). For smaller, non-OSJ offices, registered representatives were supervised directly by an AVP. The AVPs were supervised by the Executive Vice President and Head of Supervision (the "EVP"). The EVP reported to JP Turner's Chief Operating Officer, who in turn reported to Mello, as well as JP Turner's Chief Executive Officer. At all relevant times, Mello, as President, was ultimately responsible for establishing JP Turner's supervisory policies and procedures, and a system to implement these policies and procedures with a view to preventing and detecting violations of the securities laws by JP Turner's registered representatives.

The Registered Representatives' Misconduct

4. During the relevant period, the Registered Representatives collectively "churned" the accounts of seven customers by knowingly or recklessly engaging in excessive trading in disregard of the customers' investment objectives and financial needs for the purpose of generating commission business. The misconduct generated commissions, fees and margin interest totaling approximately \$845,000. JP Turner retained approximately \$200,000 of this amount.

5. During the relevant period the affected customer accounts had annualized turnover rates² of up to 56, requiring investment returns of up to 73.3 percent to break even.

² An annualized turnover ratio is the number of times per year a customer's securities are replaced by new securities. It is calculated by determining the aggregate amount of purchases in an account over a given period, calculating the ratio of those aggregate purchases to the account's average net equity during that period, and then annualizing that ratio. A turnover rate that exceeds six can reflect excessive trading. See Mihara v. Dean Witter & Co. Inc., 619 F.2d 814, 821 (9th Cir. 1980).

6. Each affected customer: (1) opened and funded his or her account after being contacted by, or otherwise introduced to, one of the Registered Representatives; (2) had excessive trading in the account that did not conform with the customer's investment objectives and financial needs; and (3) was generally unsophisticated in securities trading and relied almost exclusively on the registered representative's recommendations of investment decisions in the accounts.

Development of AARS

7. Beginning in late 2006, Mello and other senior managers at JP Turner participated in meetings to design and implement a system to monitor active trading at the firm. JP Turner had previously utilized a monitoring system based on annualized turnover rates, but determined to switch to a system that also tracked ROI. The meetings were generally attended by personnel heads from the compliance, supervisory and information technology departments as well as senior management of the firm. Through these meetings, the firm developed what came to be known as the Active Account Review System ("AARS"), which became operational in November 2007. The mechanics of the system, discussed below, were understood and collectively approved by senior management at JP Turner.

Mechanics of the AARS

8. As implemented, on a quarterly basis the AARS identified accounts with specific ROI and/or turnover levels (Levels 1 through 4). Specifically, for each customer account, the system calculated as ROI the total commissions and fees as a percentage of the average equity in the account over the trailing twelve-month period. The AARS flagged actively traded accounts that fell into one of these four levels, and required different supervisory actions at each level. At Levels 1 and 2, first-line supervisors,³ and at Levels 3 and 4, more senior supervisors, were directed to review the account or take other action.⁴

9. Additionally, for all accounts initially flagged at Level 2 or at a higher level, the compliance department sent the customer a form cover letter with an attached Active Account Suitability Supplement ("suitability supplement") and Active Account Suitability Questionnaire ("suitability questionnaire"). The suitability supplement and accompanying cover letter referenced "some of the risks associated with active trading." Specifically, the suitability supplement explained in relevant part that "active trading" (not defined) could "involve a higher degree of

³ First line supervisors included: (i) OSJ branch managers supervising the office's registered representatives, (ii) AVPs supervising registered representatives associated with non-OSJ branch offices, and (iii) AVPs supervising the trading of OSJ branch managers.

⁴ For accounts flagged at Level 2, supervisors were directed to take at least one of the following actions: (1) discuss the trading activity with the broker; (2) discuss the trading activity with the customer; (3) compute a profit-and-loss analysis; or (4) impose commission restrictions. For accounts flagged at Level 3, supervisors had the same options but were required, at a minimum, to conduct a profit-and-loss analysis.

risk,” and “should be entered into only by investors who understand the nature of the risk involved[.]” The suitability supplement further explained that “overall commissions on your account may tend to be greater than a buy and hold strategy,” and that “[y]our portfolio may tend to be more volatile with shorter-term or more active trading.”

10. JP Turner sent the cover letter, suitability supplement and suitability questionnaire once per 12-month period, even if the AARS repeatedly flagged an account as actively traded in that period. The cover letter requested that customers complete, sign, and return the suitability questionnaire identifying their investment objectives and risk tolerance. Customers were also required to sign the suitability supplement certifying that they had read an attached summary of risks associated with active trading. If a customer failed to return these forms, as a matter of practice, compliance personnel restricted trading in the account until the forms were returned and contacted the registered representative who handled that customer’s account, who in turn contacted the customer directly to facilitate the return of the forms.

Deficiencies in the AARS

11. The AARS imposed few requirements on supervisors in connection with their review of actively traded accounts. For example, JP Turner’s policies and procedures did not: (i) specify the manner in which an internal review of an account flagged by the AARS was to occur; (ii) provide any guidelines for analyzing the accounts identified on the AARS, other than the levels themselves; or (iii) require contact or follow-up of the trading activity with the customer, particularly when the AARS repeatedly flagged as actively traded a customer’s account.

12. The suitability supplement, suitability questionnaire, and associated cover letter omitted information that could have been important for obtaining meaningful customer approval of the active trading in the customer’s account. For example, the forms excluded any details concerning the commissions, margin interest and fees associated with the excessive trading and paid by the customer.

13. JP Turner sent to customers the suitability supplement and suitability questionnaire only once per twelve-month period, even if the AARS repeatedly generated active account alerts during that time period for the customer’s account. Further, the firm’s policies, procedures and systems failed to require supervisors to take any additional heightened supervisory action with respect to registered representatives in connection with customer accounts for which the AARS repeatedly generated active account alerts.

Other Relevant Systems and Procedures

14. JP Turner’s other policies, procedures and systems for supervisory review of trading activity in customer accounts were not reasonably designed to prevent and detect churning by the Registered Representatives. Apart from the AARS, branch managers or AVPs overseeing a producing branch manager were required to perform a daily “trade blotter” review of all trading activity for registered representatives under their supervision. However, the software application utilized in connection with this review did not identify account turnover or ROI, or otherwise

highlight active trading. Further, in connection with this trade blotter review, supervisors utilized a software application to generate certain “alerts” according to parameters specified by compliance personnel at JP Turner and another software application to perform ad-hoc analysis on historical trading activity in the accounts.

Accounts Managed by the Registered Representatives were Repeatedly Flagged by the AARS

15. One of the Registered Representatives was ranked as the firm’s top revenue generator in 2008 and 2009. This registered representative generated more than \$3,000,000 during that period. During the relevant period, he was also the sole or joint registered representative for over 100 customer accounts. Over 37 and 42 accounts were identified on the AARS during 2008 and 2009, respectively. Significantly, nearly all of these accounts were classified in the AARS at Level 4 at some point during the relevant period, including over 17 accounts that were classified at that level on more than three occasions.

16. During the relevant period, the other two Registered Representatives jointly held approximately 94 accounts, including 25 accounts which appeared on the AARS. Of this amount, approximately 23 accounts appeared at Level 3 or 4, including 18 accounts that appeared on multiple consecutive quarters at those levels.

17. If JP Turner and Mello, as President, had established reasonable policies and procedures, and a system to implement the firm’s policies and procedures for review of excessive trading in customer accounts, it is likely that the firm could have prevented and detected the violative conduct of the Registered Representatives.

Applicable Law

18. Section 17(a) of the Securities Act of 1933 (“Securities Act”) prohibits using the mails or instruments of interstate commerce in the offer or sale of securities to (1) employ any device, scheme, or artifice to defraud; (2) use false statements or omissions of material fact to obtain money or property; or (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser of securities. In re Dale E. Frey, Admin. Proc. File No. 3-10310, 2003 SEC LEXIS 306, at *45 (Feb. 5, 2003) (initial decision). Section 10(b) of the Exchange Act and Rule 10b-5 make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security to (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement or omission of a material fact; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Id.

19. To establish a claim of churning, the Commission must prove that (1) the trading in the account was excessive in light of the investor’s trading objectives, (2) the broker in question exercised control over the trading in the account, and (3) the broker acted with the intent to defraud or with willful and reckless disregard for the investor’s interests. See Miley v. Oppenheimer & Co., 637 F.2d 318, 324 (5th Cir. 1981), reh’g denied, 642 F. 2d 1210 (5th Cir. 1981); Moran v.

Kidder Peabody & Co., 609 F. Supp. 661, 666 (S.D.N.Y. 1985); Rush v. Oppenheimer & Co., 592 F. Supp. 1108, 1112 (S.D.N.Y. 1984), vacated, 596 F. Supp. 1529 (S.D.N.Y. 1984), rev'd, 779 F. 2d 885 (2d Cir. 1985). “Churning, in and of itself, may be a deceptive and manipulative device under section 10(b), the scienter required by section 10(b) being implicit in the nature of the conduct.” Armstrong v. McAlpin, 699 F.2d 79, 91 (2d Cir. 1983).

20. Section 15(b)(4)(E) of the Exchange Act requires broker-dealers reasonably to supervise persons subject to their supervision, with a view toward preventing violations of the federal securities laws. See e.g., In re Dean Witter Reynolds, Inc., Exchange Act Rel. No. 46578 (October 1, 2002). The Commission has emphasized that the “responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities markets.” Id. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who “has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision.” Section 15(b)(6)(A)(i) parallels Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer. Similarly, under Section 203(f) of the Advisers Act, which incorporates by reference Section 203(e)(6), the Commission may also seek sanctions where an associated person has failed reasonably to supervise, with a view to preventing violations of the federal securities laws and rules thereunder, another person subject to the investment adviser’s or associated person’s supervision who commits such violations.

Violations

21. As a result of their conduct described above, the Registered Representatives violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

22. As a result of the conduct described above, JP Turner failed reasonably to supervise the Registered Representatives within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting these registered representatives’ violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. As a result of the conduct described above, Mello, as President, failed reasonably to supervise these registered representatives within the meaning of Section 15(b)(6) of the Exchange Act, and within the meaning of Section 203(f) of the Advisers Act, with a view to preventing and detecting their violations.

JP Turner’s Remedial Efforts

23. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

Undertakings

24. Respondent Mello undertakes to provide to the Commission, within 30 days after the end of the five-month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

25. Respondent JP Turner undertakes:

- a. to retain, within 30 days of the date of entry of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Division of Enforcement of the Commission (“Division of Enforcement”), to (i) review JP Turner’s written supervisory policies and procedures designed to prevent and detect churning, including but not limited to review of the AARS and related procedures; and (ii) review JP Turner’s systems to implement its written supervisory policies and procedures designed to prevent and detect churning.
- b. to require the Independent Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a Report of the Independent Consultant to JP Turner and the Division of Enforcement. The report shall address the supervisory issues described above and shall include a description of the review performed, the conclusions reached, the Independent Consultant’s recommendations for changes or improvements to the policies, procedures and practices of JP Turner and a procedure for implementing the recommended changes or improvements to such policies, procedures and practices.
- c. to adopt, implement, and maintain all policies, procedures, and practices recommended in the Report of the Independent Consultant. As to any of the Independent Consultant’s recommendations about which JP Turner and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that JP Turner and the Independent Consultant are unable to agree on an alternative proposal, JP Turner will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.
- d. to cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring JP Turner’s employees and agents to supply such information and documents as the Independent Consultant may reasonably request.

- e. that, in order to ensure the independence of the Independent Consultant, JP Turner (i) shall not have the authority to terminate the Independent Consultant without prior written approval of the Division of Enforcement; and (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates.
- f. to require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with JP Turner, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement in Atlanta, Georgia, enter into any employment, consultant, attorney-client, auditing or other professional relationship with JP Turner, or any of their present or former affiliates, 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.
- g. that no later than 15 months after the date of entry of the Order, JP Turner shall direct the Independent Consultant to conduct a follow-up review of JP Turner's efforts to implement each of the recommendations made by the Independent Consultant and JP Turner shall direct the Independent Consultant to submit a follow-up report to the Commission staff no later than 17 months after the date of entry of the Order. JP Turner shall direct the Independent Consultant to include in the follow-up report the details of JP Turner's efforts to implement each of the Independent Consultant's recommendations and shall separately state whether JP Turner has fully complied with each of the Independent Consultant's recommendations.
- h. to certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), 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 JP Turner agrees to provide such evidence. The certification and supporting material shall be submitted to William P. Hicks, Associate Regional Director, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than 60 days from the date of the completion of the undertakings.

- i. For good cause shown and upon timely application by the Independent Consultant or JP Turner, the Commission's staff may extend any of the deadlines set forth above.

26. Respondent JP Turner also undertakes:

- a. no later than 60 days after the entry of the Order, to prepare and submit to the Independent Consultant a report (the "Initial Review Report") describing: (i) the scope and methodology of a previous review of JP Turner's supervisory practices, policies, and procedures conducted by Experts Counsel, Inc. in 2012 ("the Experts Counsel Review"); (ii) the total cost associated with the Experts Counsel Review, including the costs incurred implementing related changes to JP Turner's supervisory policies, practices, and procedures, and to the extent the total cost includes costs associated with JP Turner employee time, the methodology used to calculate the cost of such employee time; (iii) all related recommendations made by Experts Counsel; and (iv) all related revisions made to JP Turner's supervisory policies, practices, and procedures as of the date of the submission of the report.
- b. to require the Independent Consultant, within 120 days after the submission of the Initial Review Report, to prepare a supplemental report assessing the sufficiency, effectiveness, and completeness of the Experts Counsel Review and any related revisions made to JP Turner's supervisory policies, practices, and procedures; and make any recommendations as the Independent Consultant deems necessary with respect to (i) the review of any of JP Turner's supervisory policies, practices and procedures not previously reviewed by Experts Counsel; and (ii) any additional changes the Independent Consultant deems appropriate with respect to JP Turner's supervisory policies, practices, and procedures.
- c. to cooperate fully with the Independent Consultant's review and assessment, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring JP Turner's employees and agents, including Experts Counsel, to supply such information and documents as the Independent Consultant may reasonably request.
- d. to adopt, implement, and maintain all policies, procedures, and practices recommended by the Independent Consultant. As to any of the Independent Consultant's recommendations about which JP Turner and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 120 days after the submission of the

Initial Review Report. In the event that JP Turner and the Independent Consultant are unable to agree on an alternative proposal, JP Turner will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.

- e. that no later than 15 months after the date of the entry of the Order, JP Turner shall direct the Independent Consultant to conduct a follow-up review of JP Turner's efforts to implement each of the recommendations made by the Independent Consultant and of the recommendations made by Experts Counsel.
- f. to certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), 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 JP Turner agrees to provide such evidence. The certification and supporting material shall be submitted to William P. Hicks, Associate Regional Director, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than 60 days from the date of the completion of the undertakings.
- g. For good cause shown and upon timely application by the Independent Consultant or JP Turner, the Commission's staff may extend any of the deadlines set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent JP Turner is censured.
- B. Respondent Mello be, and hereby is, suspended from association in a supervisory capacity with any broker, dealer, or investment adviser for a period of five (5) months, effective on the second Monday following the entry of this Order.
- C. Respondent JP Turner shall, within 30 days of the entry of this Order, pay disgorgement of \$200,000, prejudgment interest of \$16,051, and a civil money penalty in the amount of \$200,000, to the Securities and Exchange Commission. If timely payment is not made,

additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 USC 3717. Payment shall be: (A) made by wire transfer, 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 Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies JP Turner 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 William P. Hicks, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, GA 30326-1382.

D. Respondent Mello shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 USC 3717. Payment shall be: (A) made by wire transfer, 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 Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Mello 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 William P. Hicks, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, GA 30326-1382.

E. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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.

F. Respondents shall comply with the undertakings enumerated in Section III above.
By the Commission.

Elizabeth M. Murphy
Secretary