UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95928 / September 27, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6153 / September 27, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21173

In the Matter of **Deutsche Bank Securities Inc., DWS Investment Management Americas, Inc., and DWS Distributors, Inc.** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, 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") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Deutsche Bank Securities Inc. ("DBSI"), DWS Investment Management Americas, Inc. ("DIMA"), and DWS Distributors, Inc. ("DWS Distributors," together with DIMA, "DWS") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Respondents admit the facts set forth in Section III below, acknowledge that their conduct violated the federal securities laws, admit the Commission's jurisdiction over them and the subject matter of these proceedings, and consent 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, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, 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 Respondents' Offer, the Commission finds[1] that

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers and registered investment advisers to ensure that they responsibly discharge their crucial roles in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failures of DBSI and DWS employees throughout the firms, including at senior levels, to adhere to certain of these essential requirements and the firms' own policies. These employees communicated both internally and externally by personal text messages or other text messaging platforms such as WhatsApp ("off-channel communications").

3. From at least January 2018 to September 2021, DBSI and DWS employees sent and received off-channel communications that related to the business of the broker-dealers and registered investment adviser operated by the respective Respondents. Respondents did not maintain or preserve the substantial majority of these written communications. Respondents' failures were firm-wide, and involved employees at all levels of authority. As a result, DBSI and DWS Distributors violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and DIMA violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Respondents' supervisors, who were responsible for preventing this misconduct among junior employees, routinely communicated off-channel using their personal devices. In fact, dozens of managing directors across the firms and senior supervisors responsible for implementing the firms' policies and procedures, and for overseeing employees' compliance with those policies and procedures, themselves failed to comply with firm policies by communicating using non-firm approved methods on their personal devices about the firms' broker-dealer and investment adviser businesses.

5. Respondents' widespread failures to implement their policies and procedures that prohibit such communications led to their failures to reasonably supervise their employees within the meaning of Section 15(b)(4)(E) of the Exchange Act and Section 203(e)(6) of the Advisers Act.

6. During the time period that Respondents failed to maintain and preserve off-channel communications their employees sent and received related to their broker-dealer and investment adviser businesses, Respondents received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. As a result,

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

Respondents' recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

7. Commission staff uncovered Respondents' misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. Respondents have initiated a review of their recordkeeping failures and begun a program of remediation. As set forth in the Undertakings below, Respondents have retained a compliance consultant to review and assess the firms' remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondents

8. Deutsche Bank Securities Inc. is a Delaware corporation with its principal office in New York, New York and is registered with the Commission as a broker-dealer and investment adviser. It is a wholly-owned indirect subsidiary of Deutsche Bank AG, a global financial services firm incorporated and domiciled in Germany.

9. DWS Investment Management Americas, Inc. is a Delaware corporation with its principal office in New York, New York and is registered with the Commission as an investment adviser. It is a majority-owned indirect subsidiary of Deutsche Bank AG.

10. DWS Distributors, Inc. is a Delaware corporation with its principal office in Chicago, Illinois and is registered with the Commission as a broker-dealer. It is a majority-owned indirect subsidiary of Deutsche Bank AG.

Recordkeeping Requirements under the Exchange and Advisers Acts

11. Section 17(a)(1) of the Exchange Act and Section 204 of the Advisers Act authorize the Commission to issue rules requiring, respectively, broker-dealers and investment advisers to make and keep for prescribed periods, and furnish copies of, certain records. The Commission adopted Exchange Act Rule 17a-4 and Advisers Act Rule 204-2 pursuant to this authority. These rules specify the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by broker-dealers or investment advisers, must be maintained and produced promptly to Commission representatives.

12. The rules adopted under Exchange Act Section 17(a)(1), including Exchange Act Rule 17a-4(b)(4), require that broker-dealers preserve in an easily accessible place originals of all communications received and copies of all communications sent relating to the broker dealers' business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

13. The rules adopted under Advisers Act Section 204, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to, among

other things, any recommendation made or proposed to be made and any advice given or proposed to be given.

14. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

Respondents' Policies and Procedures

15. DBSI and DWS maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

16. Respondents' employees were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats, or text-messaging applications for business purposes, or forward work-related communications to their personal devices.

17. Messages sent through the firms' approved communications methods, including certain WhatsApp messages, were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as WhatsApp used outside of the firms' approved communications methods, and those sent from unapproved applications on personal devices, were not monitored, subject to review, or archived.

18. Respondents' policies were designed to address supervisors' supervision of employees' training in the firms' communications policies and adherence to Respondents' books and recordkeeping requirements. Supervisory policies notified employees that electronic communications were subject to surveillance by Respondents. Respondents had procedures for all employees, including supervisors, requiring annual self-attestation of compliance.

19. DBSI and DWS, however, failed to implement a system of follow-up and review to determine that their supervisors were reasonably following the firms' policies. While permitting employees to use approved communications methods, including on personal phones, for business communications, Respondents failed to implement sufficient monitoring to assure that their recordkeeping and communications policies were being followed.

Respondents' Recordkeeping Failures Across the Businesses

20. In September 2021, Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. DBSI cooperated with the investigation by gathering communications from the personal devices of a broad array of senior and other broker-dealer

personnel. These personnel included senior leadership, investment bankers, and debt and equity traders.

21. The Commission staff's investigation uncovered pervasive off-channel communications at all seniority levels at DBSI. The staff requested off-channel communications data from a sampling of approximately 30 broker-dealer personnel and found that substantially all of the individuals had engaged in at least some level of off-channel communications. Overall, these personnel sent and received thousands of off-channel communications, involving other DBSI personnel, clients, and other participants in the securities industry. Within DBSI, significant numbers of managing directors, directors, trading desk heads, and industry group heads participated in off-channel communications.[2]

22. From January 2018 through September 2021, thousands of messages were sent and received that concerned DBSI's business, including investment strategy; discussions of investment banking client meetings; and communications about market color, analysis, activity trends or events.

23. For example, a managing director in a U.S. leadership role in DBSI's investment bank exchanged hundreds of off-channel business-related messages with DBSI colleagues, investment banking clients, and other financial industry participants. Within DBSI, this managing director routinely communicated with other managing directors and junior employees under his supervision.

24. From November 2018 through September 2021, this senior investment banker sent and received a substantial number of off-channel text messages. The messages concerned, among other things, DBSI's business, including investment strategy; discussions of investment banking client meetings; and communications about market color, analysis, activity trends or events in the technology industry.

25. In addition, from August 2020 through September 2021, a managing director with oversight over fixed income, trading, and financing personnel exchanged hundreds of messages with DBSI colleagues, including several managing directors. This managing director also texted with a third-party financial industry participant.

26. Overall, the voluminous off-channel messages uncovered by the staff's risk-based initiative reflect extensive discussion between and among Respondents' senior-level managing directors, directors, employees, investment banking clients, and other financial industry participants about debt and equity underwriting and trading issues.

Respondents' Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters

[2] Based on its own review, DWS has acknowledged it has recordkeeping failures in its businesses related to off-channel communications similar to those at DBSI.

27. Between January 2018 and September 2021, Respondents received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. By failing to maintain and preserve required records relating to their businesses, Respondents likely deprived the Commission of these off-channel communications in various investigations.

Respondents' Violations and Failures to Supervise

28. As a result of the conduct described above, DBSI and DWS Distributors willfully[3] violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, which require broker-dealers to preserve for at least three years originals of all communications received and copies of all communications sent relating to their business as such.

29. As a result of the conduct described above, DIMA willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, which require investment advisers to preserve in an easily accessible place originals of all written communications received and copies of all written communications sent relating to, among other things, any recommendation made or proposed to be made and any advice given or proposed to be given.

30. As a result of the conduct described above, DBSI and DWS Distributors failed reasonably to supervise their employees with a view to preventing or detecting certain of their employees' aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

31. As a result of the conduct described above, DIMA failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees' aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

Respondents' Remedial and Disciplinary Efforts

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

33. Respondents have taken significant remedial steps to reduce the risk of the misconduct recurring, including: clarifying application of relevant policies; widely providing specifically-focused training; providing clear messaging to employees from senior management regarding the use of unauthorized communication channels; enhancing surveillance protocols for investigating incidents of potential off-channel communications; regularly communicating surveillance findings to supervisors and businesses; taking swift employment action for off-channel communications, including compensation and promotion impacts, and termination; making significant investments in new technologies to facilitate compliant communications; and hiring a consultant to assist in vetting control upgrades.

[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)).

Undertakings

34. Prior to this action, Respondents enhanced their policies and procedures, and increased training concerning the use of approved communications methods, including on personal devices, and began implementing significant changes to the technology available to employees. In addition, Respondents have undertaken to:

35. Compliance Consultant.

a. Respondents shall retain, within thirty (30) days of the entry of this Order, the services of a compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. Prior to the entry of this Order, DBSI, with the agreement of DWS, retained the services of a consultant to address the issues described in this Order. The Compliance Consultant may be the same consultant previously engaged by DBSI. The Compliance Consultant's compensation and expenses shall be borne exclusively by Respondents.

b. Respondents will oversee the work of the Compliance Consultant.

c. Respondents shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. Respondents shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of Respondents' supervisory, compliance, and other policies and procedures designed to ensure that Respondents' electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.

ii. A comprehensive review of training conducted by Respondents to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Respondents' personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

iii. An assessment of the surveillance program measures implemented by Respondents to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

iv. An assessment of the technological solutions that Respondents have begun implementing to meet the record retention requirements of the federal

securities laws, including an assessment of the likelihood that Respondents' personnel will use the technological solutions going forward and a review of the measures employed by Respondents to track employee usage of new technological solutions.

v. An assessment of the measures used by the firms to prevent the use of unauthorized communications methods for business communications by employees. This assessment should include, but not be limited to, a review of the firms' policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (e.g., trading floor restrictions).

vi. A review of Respondents' electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Respondents' overall communications surveillance program.

vii. A comprehensive review of the framework adopted by Respondents to address instances of non-compliance by firm employees with Respondents' policies and procedures concerning the use of Personal Devices to communicate about firm business in the past. This review shall include a survey of how Respondents determined which employees failed to comply with Respondents' policies and procedures, the corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. Respondents shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to Respondents and to the Commission staff (the "Report"). Respondents shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to Respondents' policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to Respondents' policies and procedures.

e. Respondents shall adopt all recommendations contained in the Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of Report, Respondents shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Respondents consider to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondents consider unduly burdensome, impractical, or inappropriate, Respondents need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning Respondents' policies or procedures on which Respondents and the Compliance Consultant do not agree, Respondents and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Respondents and the Compliance Consultant, Respondents shall require that the Compliance Consultant inform Respondents and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Respondents consider to be unduly burdensome, impractical, or inappropriate. Respondents shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Respondents and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Respondents shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. Respondents shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to such of Respondents' files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. Respondents shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. Respondents shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. Respondents shall require the Compliance 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 Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Respondents, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement shall also provide that the Compliance 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 Compliance Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Respondents, 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.

j. The Report and related written communications of the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the 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) is otherwise required by law.

36. One-Year Evaluation. Respondents shall require the Compliance Consultant to assess Respondents' program for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the report required by Paragraph 35.d above. Respondents shall require this review to evaluate Respondents' progress in the areas described in Paragraph 35.c.i-vii above. After this review, Respondents shall require the Compliance Consultant to submit a report (the "One Year Report") to Respondents and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Respondents' policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

37. Reporting Discipline Imposed. For two years following the entry of this Order, Respondents shall notify the Commission staff as follows upon the imposition of any discipline imposed by Respondents, including, but not limited to, written warnings, loss of any pay, bonus, or incentive compensation, or the termination of employment, with respect to any employee found to have violated Respondents' policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices: at least 48 hours before the filing of a Form U-5, or within ten (10) days of the imposition of other discipline.

38. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, Respondents will also have their Internal Audit function conduct a separate audit(s) to assess Respondents' progress in the areas described in Paragraph 35.c.i-vii above. After completion of this audit(s), Respondents shall ensure that Internal Audit submits a report to the Commission staff.

39. Recordkeeping. Respondents shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

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 to be the last day.

41. Certification. Respondents shall 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 Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Carolyn Welshhans, Associate Director, Division of

Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, 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.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. DBSI and DWS Distributors cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

B. DIMA cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

C. Respondents are censured.

D. Respondents shall comply with the undertakings enumerated in paragraphs 35 through 41 above.

E. Respondents shall, within 14 days of the entry of this Order, pay a civil money penalty jointly and severally in the amount of $125,000,000 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:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 DBSI and DWS as Respondents 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 Carolyn Welshhans, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, 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 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 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.

By the Commission.

Vanessa A. Countryman
Secretary