

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83251 / May 16, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18486

In the Matter of

**CHARDAN CAPITAL
MARKETS, LLC**

Respondents.

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

I.

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

II.

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

III.

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

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.

SUMMARY

From at least October 2013 through June 2014 (the “relevant period”), Chardan, a registered broker-dealer, failed to file Suspicious Activity Reports (“SAR” or “SARs”) when it knew, suspected, or had reason to suspect that certain penny stock transactions it executed on behalf of its customers involved the use of its firm to facilitate fraudulent activity or had no business or apparent lawful purpose. During the relevant period, Chardan’s anti-money laundering (“AML”) policies and procedures stated that Chardan would file SARs “for transactions that may be indicative of money laundering activity,” including, among other things, “heavy trading in low-priced securities” and “trading that constitutes a substantial portion of all trading for the day in a particular security.” The policies listed a number of specific examples or “red flags” of suspicious activities related to heavy trading in low priced securities and large volume trading that should have triggered internal reviews and, in some instances, SAR filings. In particular, the policies required Chardan’s then Chief Compliance Officer (“CCO”) and AML Officer to investigate potential red flags, monitor trading for patterns of suspicious activity, and file SARs.

Despite having policies which set forth red flags of suspicious activities and the requirement to review those red flags, Chardan did not conduct the requisite review of significant penny stock liquidations that occurred through seven customer accounts during the relevant period. Chardan’s clearing firm, Industrial and Commercial Bank of China Financial Services LLC (“ICBC”), raised multiple concerns to Chardan about certain of Chardan’s customers and their trading in low-priced securities. In June 2014, ICBC ceased clearing penny stock trades, and Chardan withdrew from the penny stock business. Chardan also knew, suspected, or had reason to suspect that certain of the seven customers were engaged in fraudulent activity based on other red flags listed in their policies. These included the background and identity of the customers, trading suspensions in certain issuers that were the subject of prior trading by the customers, and numerous regulatory inquiries received after May 2014 regarding certain of the customer’s trading. Despite the suspiciousness of its customers’ transactions, the related red flags, and the requirements of its written policies to review those red flags, Chardan never investigated these red flags or filed a SAR during the relevant period related to its customers’ suspicious penny stock transactions.

By failing to file SARs as required, Chardan willfully² violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

RESPONDENT

Chardan is a registered broker-dealer located and organized in New York. Chardan has been registered with the Commission since July 2, 2002. The firm employs approximately 35 registered representatives and derives the majority of its revenues from underwriting activity in PIPES, private placements, and IPOs. In October 2013, the firm began actively engaging in the liquidation of thinly-traded penny stocks of microcap issuers on behalf of customers.³ Chardan is wholly-owned by the holding company Chardan Securities, LLC.

FACTS

Background

1. Beginning in late 2013, Chardan on-boarded seven new customers who routinely deposited and then promptly sold billions of shares of thinly-traded penny stocks. These customers typically obtained their holdings by converting debentures into shares of microcap issuers. The shares were generally deposited with a custodian and then sold through the customers' "delivery versus payment/received versus payment" accounts ("DVP/RVP accounts") at Chardan.⁴ The customers engaged in sales that regularly accounted for a substantial percentage of the daily volume in these thinly-traded penny stocks until the customer's entire position was sold. The sales frequently occurred after or as promotions in the securities were occurring. Those transactions, in light of other information known to Chardan at the time, raised or should have raised red flags for the firm. Given the suspicious nature of its customers' transactions, related red flags, and the requirements of its written policies, Chardan should have filed SARs on numerous occasions and did not produce a written analysis or other records supporting the reasonableness of why SARs did not need to be filed.

Chardan's AML Policies and Procedures

2. As part of its AML program, Chardan adopted written policies and procedures ("Chardan's Policies") concerning knowing its customers and monitoring large-volume trading. Chardan purchased template AML policies and procedures from a third-party compliance firm and modified the policies for the firm.

3. Chardan's Policies required the firm to file SARs for transactions that "may be indicative of money laundering activity." In that context, Chardan defined suspicious activities, among other things, as including "a wide range of questionable activities; examples include trading

³ Penny stock is defined under the Exchange Act as, among other things, a stock that trades for under five dollars a share. See Exchange Act Section 3(a)(51) and Rule 3a51-1.

⁴ DVP/RVP accounts do not require an account holder to maintain cash in the account. In other words, DVP/RVP accounts are securities brokerage accounts in which securities must be fully paid for with cash at the time of settlement. Margin may not be extended to the customer to settle securities trades in a DVP/RVP account.

that constitutes a substantial portion of all trading for the day in a particular security [and] heavy trading in low-priced securities[.]”

4. Chardan’s Policies then went on to set forth “red flags” that may suggest potential money laundering. If an employee encountered suspicious activity or red flags, under Chardan’s Policies, the employee was obligated to notify his or her supervisor and/or Chardan’s AML Officer. Chardan’s then CCO and AML Officer was required to “investigat[e] suspected money laundering activities and tak[e] corrective action when necessary.” In addition, the AML Officer was vested with independent responsibility for “reviewing reports and other available information to detect questionable patterns of activity.” Relevant red flags included:

- The customer “(or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.”
- The customer “wishes to engage in transactions that lack business sense . . . or are inconsistent with the customer’s stated business strategy.”
- The customer “has opened multiple accounts with the same beneficial owners or controlling parties for no apparent business reason.”
- “Two or more accounts trade an illiquid stock suddenly and simultaneously.”
- “Law enforcement subpoenas.”
- The customer makes a “request to liquidate [penny stock] shares,” which “may also represent engaging in an unregistered distribution of penny stocks.”⁴

5. Chardan’s Policies also identified specific red flags related to transactions in the shares of penny stock issuers. In particular, these red flags focused on the issuers underlying the trade and were concerned with issuers that:

- have no business, no revenues, and no product;
- have experienced frequent or continuous changes in their business structure;
- have officers who are associated with multiple penny stock issuers;
- undergo frequent material changes in business strategy or its line of business; or

⁴ Chardan’s Policies with respect to this red flag cited directly to FINRA Regulatory Notice 09-05. This notice reminded member firms of their obligation to recognize red flags concerning unregistered offerings. Chardan’s Policies augmented this statement providing examples of various red flags that may indicate a customer is selling unregistered securities. One of these red flags was if there is a “sudden spike in investor demand for, coupled with a rising price in, a thinly-traded or low-priced security.”

- have been the subject of a prior trading suspension.

6. Chardan failed to comply with its statutory responsibilities, or to implement its own policies, regarding the high volume sales of penny stocks and other red flags related to the transactions of the seven customers at issue. Chardan monitored its customers' trading, but did not do so sufficiently to identify suspicious activity. Chardan's actual practices did not comport with its documented procedures. Specifically, as noted above, the AML Officer was responsible for "reviewing reports and other available information to detect questionable patterns of activity." However, despite the requirements of its policies, Chardan did not always conduct the required review. As a result, Chardan failed to file SARs as required by Section 17(a) of the Exchange Act and Rule 17a-8 thereunder and did not produce a written analysis or other records supporting the reasonableness of why SARs did not need to be filed.

Suspicious Trading

7. Beginning in late 2013 through the first half of 2014, Chardan facilitated the sale of billions of shares of low-priced, thinly-traded penny stocks for seven customers, all of which cleared through a single clearing firm, ICBC. This trading in penny stocks led to a large uptick in Chardan's commissions from equity trading: in December 2013, Chardan generated just over \$235,000 in such commissions, while in January 2013, it generated over \$797,000.

8. Specifically, seven of Chardan's customers from the period October 1, 2013 to June 30, 2014 sold over 12.5 billion shares of penny stocks. These sales were often in large volumes, constituting a material percentage of the daily sales volume in the security. Each of the seven customers engaged in at least one transaction where the customer's sales of a particular penny stock accounted for over 50 percent of the sales volume in that penny stock during a single trading day, and four of the seven customers engaged in at least one such transaction where the customer's sales exceeded 70 percent of the sales volume in a penny stock during a single trading day.

9. Despite the explicit requirements of Chardan's Policies, Chardan failed to adequately investigate suspicious activity as these customers engaged in these sales.

10. These liquidations were coupled with other indicia that should have further heightened suspicion and raised concerns for Chardan. For example, its customers were trading in penny stocks where the issuers had ongoing promotional campaigns or had large accumulated deficits. In other instances, Chardan became aware of additional suspicious transactions or other red flags related to its customers or their accounts subsequent to their suspicious trading. For example:

- After the trades were executed, Chardan received numerous regulatory inquiries concerning certain securities that certain of these seven customers' effected trading in.
- Chardan discovered past criminal and regulatory issues with an entity with which certain of these seven customers were associated.

- Chardan knew, or should have known, that the Commission suspended trading in three securities after the securities had been recently liquidated by certain of these seven customers.

11. Chardan failed to properly investigate its customers' already suspicious high-volume trading in light of these red flags and never filed a SAR with respect to any of these transactions. This contravened Chardan's Policies, which required that Chardan investigate suspicious transactions and file a SAR as necessary.

12. In addition, under Chardan's Policies, if the firm was confronted with red flags that indicated a customer may be engaging in a distribution of unregistered securities, the firm should have obtained additional information, such as how the customers acquired the penny stocks and how long those customers had held the stock. Among other things, these red flags included:

- "There is a sudden spike in investor demand for, coupled with a rising price in, a thinly-traded or low-priced security."
- "A customer with limited or no other assets under management at [Chardan] receives an electronic transfer or journal transactions of large amounts of low-priced, unlisted securities."
- "The issuer's SEC filings are not current, are incomplete or nonexistent."

13. In some cases, the large volume penny stock sales transactions through the DVP/RVP accounts, along with other red flags, should have caused Chardan to gather additional information about how its customers acquired their shares and how long the customers had held the stock. Chardan's then CCO and AML Officer had responsibility for implementing the relevant Chardan Policies, as well as actually filing SARs. Initially, when Chardan's customers began selling large quantities of penny stocks, insufficient diligence or monitoring was done for these transactions in contravention of Chardan's Policies. Over time, the process for evaluating transactions in low-priced securities evolved: first, Chardan adopted a policy requiring customers to provide a legal opinion with respect to the legality of the transactions; later, a policy was adopted requiring customers to provide additional documentation related to how they obtained shares. Chardan's then CCO and AML Officer was responsible for implementing this process. Despite the evolution of Chardan's Policies related to transactions in low-priced securities, Chardan failed to collect documents sufficient to show how each of its customers obtained their shares for dozens of transactions that should have raised red flags under Chardan's Policies contemporaneously with customers' trading. In addition, insufficient monitoring was done for patterns of suspicious activity as required under Chardan's Policies.

14. When Chardan's customers did provide transaction documentation, those files were sent to Chardan's then CCO and AML Officer. In one instance, Chardan's then CCO and AML Officer was not satisfied with the transaction documents provided by a customer, and did not permit the customer to execute a trade, yet he did not file a SAR related to that transaction or conduct further investigation.

15. In addition to the transaction documents provided by customers, Chardan's then CCO and AML Officer reviewed a daily trade blotter containing quantity and price of shares sold by customers. However, despite internal policies that required Chardan's then CCO and AML Officer to look for patterns of suspicious activity and red flags related to transactions in low-priced securities, Chardan's then CCO and AML Officer insufficiently looked into suspicious patterns or potential red flags regarding issuers, their principals, or their trading volume. Had he done so sufficiently, he would have identified suspicious activity related to customers' sales of low-priced securities.

16. Chardan's clearing firm, ICBC, also on several occasions brought suspicious transactions to Chardan's attention. Nonetheless, Chardan did not conduct an adequate investigation under its policies into these transactions or file a SAR. For example, by late June 2014, ICBC had enough concerns about the seven customers' trading activity at Chardan that it eventually ended trading in penny stock securities by Chardan customers. Despite the total shutdown of this business by its clearing firm, Chardan never investigated its customers' trading activity nor filed a SAR related to any of the trading by the seven customers.

17. In certain instances, when FINRA staff and the Commission's staff separately requested any files in the possession, custody, or control of Chardan related to certain transactions in low-priced securities as part of their respective regulatory inquiries and the Commission's investigation in this case, Chardan's then CCO and AML Officer requested that registered representatives contact customers and obtain those documents. Neither he nor any other Chardan employee had previously done so despite the requirements of Chardan's Policies described in paragraph 12 above. Chardan's then CCO and AML Officer then provided the documents to regulatory staff without noting that Chardan obtained those documents only after receiving the request. As a result, the regulatory staff believed that the documents were in Chardan's files at the time of the transactions when, in fact, Chardan received the documents after the receipt of the regulatory inquiry.

18. As outlined in the illustrative transactions below, Chardan was aware of red flags regarding its customers and the microcap issuers in whose securities those clients traded; however, even though it was required under its policies, Chardan failed to adequately investigate those transactions or to file SARs regarding the suspicious conduct in contravention of its policies and the requirements of the Bank Secrecy Act ("BSA") and Exchange Act.

Illustrative Transactions

Customer A

19. In December 2013 and March 2014, Customer A opened two accounts at Chardan controlled by the same individuals. Customer A traded substantial volumes of the daily market in fourteen microcap issuers in these two accounts from December 2013 through May 2014. Of the 165 dates it sold securities, Customer A accounted for over 20 percent of the sales volume on 129 of those dates and over 50 percent of the sales volume on 59 of those dates. In addition to this

high-volume trading, which was a red flag of potential money laundering under its policies, Chardan was or should have been aware of a number of additional red flags that should have further raised suspicions concerning Customer A's trading, including:

- Chardan knew or should have known that eight of the issuers were the subject of promotional campaigns just before or during Customer A's trading.
- The SEC suspended trading in one of the issuers approximately six weeks after Customer A's large volume of sales in that security.
- After the trades were executed, Chardan received regulatory inquiries regarding Customer A's trading in three securities.

In addition, Chardan never questioned the business purpose of the same individuals having accounts in two names, despite its policies identifying a single customer having multiple accounts under multiple names as a red flag requiring further investigation.

20. Chardan was also aware that the individuals involved with Customer A were previously associated with an entity that had been charged by the Commission on August 22, 2012, with securities fraud. In that matter, the Commission charged the entity with conducting an unlawful penny stock scheme in which the entity bought billions of stock shares from small companies and illegally resold those shares in the public market. The purported exemption used in the Commission's action was the same one that Customer A used to conduct certain of its trading at Chardan. The registered representative at Chardan on Customer A's account contacted management of Customer A who informed him that the individual charged in the Commission's action, while not a principal or control person of Customer A, was a consultant to Customer A. Despite knowing this additional fact, Chardan conducted no further investigation into Customer A's trading and took no alternative actions, such as heightened scrutiny of Customer A's transactions, as required under the Chardan's Policies. Further scrutiny of Customer A's transactions would have shown that it was engaged in the same type of transactions as the Commission had alleged to be fraudulent.

21. Despite the substantial daily volume of trading by Customer A in these securities and the other red flags associated with the transactions set forth above, Chardan never filed a SAR to report Customer A's transactions and did not produce a written analysis or other records supporting the reasonableness of why SARs did not need to be filed.

Trading by Three Customers in the Penny Stock of Issuer Z

22. Three apparently unrelated Chardan customers traded substantial volumes of the penny stock of Issuer Z from December 2013 through April 2014. The customers' trading accounted for an average of 38.33 percent of the overall market volume on their trading dates at an average price of \$.0003-\$.0004 per share. In addition to this high-volume trading, which was a red flag of potential money laundering under its policies, Chardan was or should have been aware of a number of additional red flags that should have further raised suspicions concerning Issuer Z:

- The issuer had no revenues and a massive accumulated deficit. In addition, the company had no current SEC filings.
- One of Issuer Z's officers was the officer of two other microcap companies around the same time.
- There was a price and volume spike immediately before the three customers began liquidating their shares.

23. Customer A sold over 1.3 billion shares of the penny stock of Issuer Z at an average price of \$.0004 per share. On four of fourteen dates, Customer A's trading accounted for more than 60 percent of the day's sales volume in the stock. In addition, under Chardan's Policies, if the firm was confronted with red flags that indicated a customer may be engaging in a distribution of unregistered securities, Chardan should have reviewed, among other things, how the customer obtained its shares and how long the customer held the shares. Despite the requirements of its policies, Chardan never obtained any documents or information from Customer A showing how it obtained its shares or how long it had held the shares.

24. Similarly, Customer B sold around 490 million shares of the penny stock of Issuer Z at an average price of \$.0003 per share accounting for an average of 50.99 percent of the sales volume on the days it sold. In this instance, Chardan had obtained documents and information from Customer B relating to how the customer acquired its shares. However, this documentation raised additional questions that Chardan failed to investigate. For example, the documentation indicated Customer B wired funds to an account in Costa Rica in order to obtain its shares. In addition, the stock purchase agreement governing Customer B's purchase of the shares obtained by Chardan was only executed by Customer B, and was not executed by the Commonwealth of Dominica-based entity from whom Customer B purported to obtain its shares.

25. Customer C sold approximately 250 million shares of the penny stock of Issuer Z at an average price of \$.0003 per share. Customer C sold the penny stock of Issuer Z over ten days. During those ten days, Customer C accounted for 20 percent or more of the volume in the penny stock of Issuer Z on four of those days, including on one day accounting for approximately 55 percent of the daily sales volume. In addition, promotional activity involving the penny stock of Issuer Z occurred just days prior to Customer C beginning its selling.

26. Despite the substantial daily trading volume by Chardan's three customers in the penny stock of Issuer Z and the other red flags associated with the transactions set forth above, Chardan did not file a SAR related to these customers' trading in the penny stock of Issuer Z and did not produce a written analysis or other records supporting the reasonableness of why SARs did not need to be filed.

Trading by Customer B in the Penny Stock of Issuer Y

27. Customer B sold over 300 million shares of the penny stock of Issuer Y between February 25 and April 23, 2014. During this time period, in its financial disclosures filed with OTC Markets, Inc., the company described frequent material changes in its business strategy and line of business. In addition, the company had no current SEC filings. These were red flags under Chardan's Policies. Had Chardan reviewed the issuer further, it would have discovered that the issuer had large accumulated deficits and its stock was the subject of regular promotional campaigns between January and April 2014.

28. Under Chardan's Policies, if the firm was confronted with red flags that indicated a customer may be engaging in a distribution of unregistered securities, Chardan should have reviewed, among other things, how the customer acquired its shares. In this case, Chardan obtained documentation accounting for Customer B's purchase of 135 million shares, but did not obtain any documentation or information relating to how Customer B acquired the remaining shares.

29. The information and documentation provided by the customer documenting the purchase of the 135 million additional shares raised additional questions on its face that Chardan did not investigate. For example, Customer B wired money to pay for its debt purchase to a foreign entity that was different from the entity that it purportedly purchased the debt from in the governing contracts. Chardan never followed up with Customer B to inquire as to the reason for this discrepancy. In addition, the documents showed Customer B purchasing \$7,500 of convertible debt from Issuer Y for \$160,000 and \$6,000 of convertible debt from Issuer Y for \$250,000. Chardan did not investigate or inquire as to why there was such a significant increase in the price paid by Customer B between the two transactions.

30. Despite the red flags associated with Customer B's transaction in the penny stock of Issuer Y, Chardan did not file a SAR related to this activity and did not produce a written analysis or other records supporting the reasonableness of why SARS did not need to be filed.

Remedial Actions Taken By Chardan

31. Chardan has taken remedial actions to improve compliance with Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. Chardan's remedial actions include:

- a. Reviewing its Written Supervisory Procedures to reflect updated regulatory guidance for low-priced securities;
- b. Retaining a compliance consultant to assist its then CCO and AML Officer with compliance issues;
- c. Hiring the compliance consultant as a full-time employee, Co-CCO, and later as sole CCO);

- d. Hiring a new Co-CCO;
- e. Implementing additional procedures requiring employees to participate in compliance training;
- f. Retaining a financial and operations principal to oversee its books and records, update its policies and procedures, and monitor the firm's compliance to the federal securities laws.

VIOLATIONS

32. The BSA, and implementing regulations promulgated by Financial Crimes Enforcement Network ("FinCEN"), require that broker-dealers file SARs with FinCEN to report a transaction (or a pattern of transactions of which the transaction is a part) conducted or attempted by, at, or through the broker-dealer involving or aggregating to at least \$5,000 that the broker-dealer knows, suspects, or has reason to suspect: (1) involves funds derived from illegal activity or is conducted to disguise funds derived from illegal activities; (2) is designed to evade any requirement of the BSA; (3) has no business or apparent lawful purpose and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts; or (4) involves use of the broker-dealer to facilitate criminal activity. 31 C.F.R. § 1023.320(a)(2) ("SAR Rule").

33. Exchange Act Rule 17a-8 requires broker-dealers registered with the Commission to comply with the reporting, record-keeping, and record retention requirements of the BSA. The failure to file a SAR as required by the SAR Rule is a violation of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

34. As a result of its customers' activity described in Section III above, Chardan knew, suspected, or had reason to suspect that its customers were using their Chardan accounts to facilitate unlawful activity. Furthermore, Chardan's customers' deposits and subsequent liquidations of penny stocks were suspicious because they lacked any apparent business or lawful purpose.

35. By failing to file SARs with FinCEN as required by the BSA with respect to any of its customers' activities described above, Chardan willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

IV.

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

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

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

B. Respondent is censured.

C. Respondent shall pay civil penalties of \$1,000,000, to the Securities and Exchange Commission within thirty (30) days of the entry of this Order for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3).

D. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sheldon L. Pollock, Division of Enforcement, Securities and Exchange Commission, New York Regional Office 200 Vesey Street, Suite 400, New York, New York 10281.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, 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 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 he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary