

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 4493 / August 23, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17409

In the Matter of

**Apollo Management V, L.P.,
Apollo Management VI, L.P.,
Apollo Management VII, L.P. and
Apollo Commodities Management, L.P.,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND 203(k)
OF THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND IMPOSING 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 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Management VII, L.P., and Apollo Commodities Management, L.P. (collectively, “Apollo” or “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

SUMMARY

1. These proceedings arise from two distinct breaches of fiduciary duty. First, Apollo entered into certain agreements with portfolio companies that were owned by Apollo-advised funds ("monitoring agreements"). Pursuant to the terms of the monitoring agreements, Apollo charged each portfolio company an annual fee in exchange for rendering certain consulting and advisory services to the portfolio company concerning its financial and business affairs ("monitoring fee"). From at least December 2011 through May 2015, upon either the private sale or an initial public offering ("IPO") of a portfolio company, Apollo terminated certain portfolio company monitoring agreements and accelerated the payment of future monitoring fees provided for in the agreements. Although Apollo disclosed that it may receive monitoring fees from portfolio companies held by the funds it advised, and disclosed the amount of monitoring fees that had been accelerated following the acceleration, Apollo failed adequately to disclose to its funds, and to the funds' limited partners prior to their commitment of capital, that it may accelerate future monitoring fees upon termination of the monitoring agreements. Because of its conflict of interest as the recipient of the accelerated monitoring fees, Apollo could not effectively consent to this practice on behalf of the funds it advised.

2. Second, in June 2008, Apollo Advisors VI, L.P. ("Advisors VI") – the general partner of Apollo Investment Fund VI, L.P. ("Fund VI") – entered into a loan agreement with Fund VI and four parallel funds (collectively, the "Lending Funds"). Pursuant to the terms of the loan agreement, Advisors VI borrowed approximately \$19 million from the Lending Funds, which was equal to the amount of carried interest then due to Advisors VI from the Lending Funds. The loan had the effect of deferring taxes that the limited partners of Advisors VI would owe on their respective share of the carried interest until the loan was extinguished. Accordingly, the loan agreement obligated Advisors VI to pay interest to the Lending Funds until the loan was repaid. From June 2008 through August 2013, when the loan was terminated, the Lending Funds' financial statements disclosed the amount of interest that had accrued on the loan and included such interest as an asset of the Lending Funds. The Lending Funds' financial statements, however, did not disclose that the accrued interest would be allocated solely to the capital account of Advisors VI. The failure by Apollo Management VI, L.P. ("AM VI"), the Fund VI investment adviser, to disclose that the accrued interest would be allocated solely to the account of Advisors VI rendered the disclosures in the Lending Funds' financial statements concerning the loan interest materially misleading.

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

3. In addition, from at least January 2010 through June 2013, a former senior partner at Apollo (“Partner”) improperly charged personal items and services to Apollo-advised funds and the funds’ portfolio companies. Apollo failed reasonably to supervise the Partner, with a view to preventing violations of the federal securities laws within the meaning of Section 203(e)(6) of the Advisers Act.

4. Finally, Apollo failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act arising from the undisclosed receipt of accelerated monitoring fees and failed to implement its policies and procedure concerning employees’ reimbursement of expenses.

5. By virtue of this conduct, Apollo violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.

RESPONDENTS

6. **Apollo Management V, L.P. (“AM V”)** is a Delaware limited partnership with its principal place of business in New York, New York. AM V is a private equity fund adviser and has at all relevant times managed Apollo Investment Fund V, L.P. AM V is registered with the Commission as an investment adviser and has elected to file as a “relying adviser” on Apollo Management, L.P.’s Form ADV.

7. **Apollo Management VI, L.P. (“AM VI”)** is a Delaware limited partnership with its principal place of business in New York, New York. AM VI is a private equity fund adviser and has at all relevant times managed Apollo Investment Fund VI, L.P. AM VI is registered with the Commission as an investment adviser and has elected to file as a “relying adviser” on Apollo Management, L.P.’s Form ADV.

8. **Apollo Management VII, L.P. (“AM VII”)** is a Delaware limited partnership with its principal place of business in New York, New York. AM VII is a private equity fund adviser and has at all relevant times managed Apollo Investment Fund VII, L.P. AM VII is registered with the Commission as an investment adviser and has elected to file as a “relying adviser” on Apollo Management, L.P.’s Form ADV.

9. **Apollo Commodities Management, L.P. (“ACM”)** is a Delaware limited partnership with its principal place of business in New York, New York. ACM is a private equity fund adviser that has been registered with the Commission as an investment adviser since October 2008 and manages Apollo Natural Resource Partners, L.P.

OTHER RELEVANT ENTITIES

10. **Apollo Investment Fund V, L.P. (“Fund V”)** is a Delaware limited partnership and private investment fund formed in 2000 to make private equity investments.

11. **Apollo Investment Fund VI, L.P. (“Fund VI”)** is a Delaware limited partnership and private investment fund formed in 2005 to make private equity investments.

12. **Apollo Investment Fund VII, L.P. (“Fund VII”)** is a Delaware limited partnership and private investment fund formed in 2007 to make private equity investments.

13. **Apollo Natural Resource Partners, L.P. (“ANRP”)** is a Delaware limited partnership and private investment fund formed in 2008 to make private equity investments.

14. **Apollo Advisors VI, L.P. (“Advisors VI”)** is a Delaware limited partnership and the general partner of Fund VI. Advisors VI delegated management, operation, and control of Fund VI to AM VI. AM VI and Advisors VI are affiliated entities with common ownership.

FACTS

A. Background

15. AM V, AM VI, AM VII, and ACM are New York-based private equity fund advisers (collectively, “Apollo”). Apollo Global Management, LLC (NYSE: APO), a publicly traded company since 2011, is Apollo’s parent company and has approximately \$170 billion in assets under management.

16. Apollo has advised multiple private equity funds, including Apollo Investment Fund V, Apollo Investment Fund VI, Apollo Investment Fund VII, and Apollo Natural Resource Partners (collectively, the “Funds”), each of which is governed by a limited partnership agreement (“LPA”) setting forth the rights and obligations of its partners, including the Fund’s obligations to pay advisory and other fees and expenses to Apollo pursuant to a separate management agreement between each fund and the relevant Apollo adviser. As is typical in the private equity industry, among other fees and expenses, Apollo generally charges the limited partners in its Funds an annual advisory or “management fee” equivalent to approximately 1.2% of their capital under management (as reduced by credits in respect of fees from portfolio companies).

17. Consistent with industry practice, the general partner of each Fund is entitled to 20% carried interest on all distributions made by the Fund, after contributed capital and a hurdle rate of 8% has been returned to limited partners.

18. Each Fund's LPA established an Advisory Board consisting of representatives from at least six limited partners, appointed by the general partner of each Fund. Affiliates of the general partner, management company, and certain partners are prohibited from serving as members of the Advisory Board for the Funds at issue. The functions of the Advisory Board include, among other things, the review of any potential conflicts of interest involving the management company or the general partner (including those relating to the receipt of certain fees).

B. Acceleration of Monitoring Fees

19. Each Apollo-advised fund owns multiple portfolio companies. Apollo typically enters into monitoring agreements with each portfolio company that is owned by an Apollo-advised fund. Pursuant to the terms of the monitoring agreements, Apollo charges certain portfolio companies monitoring fees in exchange for rendering certain consulting and advisory services to such portfolio companies concerning their financial and business affairs. The monitoring fees paid by each fund-owned portfolio company to Apollo are in addition to the annual management fee paid by the Funds' limited partners to Apollo. However, a certain percentage of the monitoring fees the portfolio companies pay to Apollo is used to offset a portion of the annual management fees that the Funds' limited partners would otherwise pay to Apollo. The offset percentage, which generally is 65% to 68% for the relevant Funds, is set forth in each Fund's LPA or investment advisory agreement. Certain limited partners of ANRP receive higher offset percentages – from 80% to 100% – pursuant to side letters.

20. The Funds' LPAs and other disclosure documents authorize Apollo to collect certain "Special Fees" related to its negotiation of the acquisition and financing of portfolio investments. These Special Fees include, among others, consulting fees, advisory fees, and transaction fees. For example, the Funds' LPAs and Private Placement Memoranda generally provide that Apollo is entitled to receive "[a]ny consulting fees, investment banking fees, advisory fees, breakup fees, directors' fees, closing fees, transaction fees and similar fees . . . in connection with actual or contemplated Portfolio investments."

21. Apollo's monitoring agreements commonly provide for ten years of monitoring services and fees. The monitoring agreements between Apollo and the portfolio companies also provide for acceleration of monitoring fees to be triggered by certain events. For example, upon either the private sale or IPO of a portfolio company, the monitoring agreements allowed Apollo to terminate the monitoring agreement and accelerate the remaining years of monitoring fees, and receive present value lump sum "termination payments." While many of these accelerated

monitoring payments reduced management fees otherwise payable by limited partners, the net amount of the payments also reduced the value of the Funds' assets (i.e., the portfolio companies making the accelerated monitoring payments) when sold or taken public, thereby reducing the amounts available for distribution to the Funds' partners.

22. In some instances, Apollo terminated the monitoring agreement upon private sale of a portfolio company and accelerated monitoring fee payments even though the relevant Apollo-advised fund had completely exited the portfolio company and Apollo would no longer be providing any monitoring services. In most instances, Apollo terminated the monitoring agreement upon a portfolio company IPO and accelerated monitoring fee payments while the Funds maintained a significant ownership stake in the company. In connection with most IPOs, Apollo continued to provide certain consultancy and advisory services to the publicly traded portfolio company until the fund completely exited its investment. However, in some instances, Apollo accelerated monitoring fees beyond the period of time during which it held an investment in the publicly traded portfolio company. In other instances, Apollo provided services for periods longer than the period for which it received accelerated monitoring fee payments.

23. While Apollo disclosed its ability to collect Special Fees to the Funds and to the Funds' limited partners prior to their commitment of capital, it did not adequately disclose to the Funds, the Funds' Advisory Boards, or the Funds' limited partners its practice of accelerating monitoring fees until after Apollo had taken accelerated fees. The disclosures were made in distribution notices, reports to the Advisory Board, and, in the case of IPOs, Form S-1 filings. By the time these disclosures were made, the limited partners had already committed capital to the Funds and the accelerated fees had already been paid. Because of its conflict of interest as the recipient of the accelerated monitoring fees, Apollo could not effectively consent to the practice on behalf of the Funds.

C. AM VI Failed to Disclose Material Information Concerning a Fund Loan

24. In June 2008, Advisors VI – the general partner to Fund VI – entered into a loan agreement with Fund VI and four parallel funds (collectively, the “Lending Funds”). The Lending Funds loaned Advisors VI approximately \$19 million, an amount equal to carried interest that was then due to Advisors VI resulting from the recapitalization of two portfolio companies owned by the Lending Funds. The loan had the effect of deferring taxes the limited partners of Advisors VI would owe on the carried interest until the loan was extinguished.

25. Advisors VI, the general partner, delegated management, operation, and control of the Lending Funds to AM VI, which performed these functions in addition to serving as the investment adviser to the Lending Funds. Advisors VI and AM VI are affiliated entities with common ownership.

26. Pursuant to the terms of the loan agreement, Advisors VI was obligated to pay the Lending Funds interest at the Applicable Federal Rate, which was 3.45% per year.² From June 2008 through August 31, 2013, the Lending Funds' quarterly and annual financial statements disclosed the amount of interest that had accrued on the loan and included such interest as an asset of the Lending Funds.

27. Despite the terms of the loan agreement and the disclosures in the Lending Funds' financial statements showing that the interest income was accruing, the Lending Funds' financial statements did not disclose that the accrued interest on the loan would be allocated solely to the capital account of Advisors VI. AM VI's failure to disclose that the accrued interest would be allocated solely to the capital account of Advisors VI rendered the disclosures in the Lending Funds' financial statements concerning the interest materially misleading.

28. In March 2014, the Lending Funds' 2013 annual financial statements disclosed, for the first time, that the interest had been allocated solely to the capital account of Advisors VI.

D. Apollo Failed Reasonably to Supervise a Former Senior Partner's Expense Reimbursement Practices

29. From at least January 2010 through June 2013, a former Apollo senior partner ("Partner") improperly charged personal items and services (collectively, "personal expenses") to Apollo-advised funds and the funds' portfolio companies.

30. In certain instances, the Partner submitted fabricated information to Apollo in an effort to conceal his conduct. In other instances, the personal expenses on their face appeared to have a legitimate business purpose.

31. Notwithstanding his efforts to conceal his conduct, in October 2010, the Partner's then-administrative assistant became suspicious of his expense reports and reported the issue to an Apollo expense manager, who reviewed the Partner's expenses for the prior six months and discussed them with the Partner. Subsequently, in November 2010, the Partner admitted that he had improperly charged certain personal expenses and reimbursed Apollo. In response, Apollo verbally reprimanded the Partner.

32. Despite the Partner's conduct and Apollo's Travel and Expense Reimbursement Policies and Procedures ("T&E Policies and Procedures"), which explicitly state that certain types of charges for which the Partner sought

² The Applicable Federal Rate is set each month by the IRS and is the minimum interest rate that must be paid in order for loans to be considered *bona fide* loans and not income or gifts by the IRS. See 26 US Code §1274(d).

reimbursement are non-reimbursable, Apollo did not take any additional remedial or disciplinary steps in response to the Partner's expense reimbursement practices.

33. In early 2012, based on renewed suspicions, Apollo initiated a second review of the Partner's expenses for the prior six months. In May 2012, as a result of this second review, the Partner again reimbursed Apollo for certain personal expenses that he improperly charged. While Apollo issued another verbal reprimand to the Partner and instructed him to stop submitting personal expenses for reimbursement, Apollo did not take any other remedial or disciplinary steps at that time, or further supervise the Partner.

34. In August 2012, Apollo, on its own initiative, engaged outside counsel, which then engaged an independent audit firm, to conduct a firm-wide review of expense allocations. As part of this review, Apollo requested that the independent audit firm review the Partner's reimbursement practices. In June 2013, the independent auditor singled out the Partner's expense reports for further review, which entailed an in-depth examination of the Partner's expenses as well as the Partner's emails and calendar entries.

35. On July 1, 2013, Apollo's internal and outside counsel met with the Partner concerning his expenses. During that meeting, the Partner acknowledged that he had improperly charged a number of personal expenses. As a result, Apollo placed the Partner on unpaid leave.

36. On July 8, 2013, Apollo's outside counsel retained an accounting firm – at the Partner's expense – to conduct a forensic review of the Partner's expenses from January 2010 to June 2013. That review revealed additional personal expenses that the Partner improperly charged to Apollo-advised funds and the funds' portfolio companies.

37. Apollo thereafter voluntarily reported the Partner's expense issues it had discovered to the staff of the Commission.

38. In or about January 2014, the Partner repaid Apollo for the personal expenses that he improperly charged.

39. On January 10, 2014, Apollo and the Partner executed a formal separation agreement.

E. Apollo Failed to Adopt and Implement Policies and Procedures Reasonably Designed to Prevent Violations of the Advisers Act and its Rules

40. As registered investment advisers, AM V, AM VI, AM VII and ACM are subject to the Advisers Act requirement to adopt and implement written

policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

41. While AM V, AM VI, AM VII and ACM were registered with the Commission as investment advisers, they failed adequately to disclose their practice of receiving accelerated monitoring fees, and reimbursed the Partner for certain expenses without sufficient documentation as required by the T&E Policies and Procedures.

42. Despite the practice of receiving accelerated monitoring fees, Apollo did not adopt or implement any written policies or procedures reasonably designed to prevent violations of the Advisers Act or its rules arising from the undisclosed receipt of fees. Apollo also failed, during the relevant time period, to properly implement its T&E Policies and Procedures requiring the submission of receipts.

VIOLATIONS

43. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of *scienter* is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, AM V, AM VI, AM VII and ACM violated Section 206(2) of the Advisers Act.

44. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” As a result of the conduct described above, AM V, AM VI, AM VII and ACM violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

45. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. As a result of the conduct described above, AM V, AM VI, AM VII and ACM violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

46. As a result of the conduct described above, AM V, AM VI, AM VII and ACM failed reasonably to supervise Partner, within the meaning of Section 203(e)(6) of the Advisers Act.

APOLLO'S COOPERATION AND REMEDIAL EFFORTS

47. In determining to accept Apollo's Offer, the Commission considered remedial acts taken by Apollo and cooperation afforded the Commission staff. Apollo initiated several reviews of the former Partner's expenses and voluntarily reported the improperly charged personal expenses to the Commission staff.

48. Throughout the staff's investigation, Apollo voluntarily and promptly provided documents and information to the staff. Apollo met with the staff on multiple occasions and provided detailed factual summaries of relevant information. Apollo was extremely prompt and responsive in addressing staff inquiries.

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 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondents AM V, AM VI, AM VII, and ACM cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder.
- B. Respondents AM V, AM VI, AM VII, and ACM shall pay, jointly and severally, disgorgement and prejudgment interest as follows:
 - i. Respondents shall pay \$40,254,552, consisting of disgorgement of \$37,527,000 and prejudgment interest of \$2,727,552 (collectively, the "Disgorgement Fund") to compensate the Funds that invested in private equity transactions that resulted in payment of undisclosed accelerated monitoring fees from December 2011 through May 2015, and to compensate the Lending Funds for interest improperly allocated to Advisors VI;
 - ii. Within ten (10) days of the entry of this Order, Respondents shall deposit the full amount of the Disgorgement Fund into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to

the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600;

- iii. Respondents shall be responsible for administering the Disgorgement Fund. Within 30 days of the entry of this Order, Apollo shall submit a proposed distribution to the staff for review and approval. The proposed distribution will include the names of the applicable funds or limited partners and their respective payment amounts and a description of the methodology used to determine the exact amount of payment or credit for each fund or limited partner that will receive a distribution. The distribution of the Disgorgement Fund shall be made in the next two fiscal quarters immediately following the entry of this Order, based on the methodology set forth in the proposed distribution and as reviewed and not objected to by the staff. If Respondents do not distribute any portion of the Disgorgement Fund for any reason, including factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury. Any such payment shall be made in accordance with Section IV.C below;
- iv. Respondents agree to be responsible for all tax compliance responsibilities associated with distribution of the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Disgorgement Fund; and
- v. Within 180 days after the date of the entry of the Order, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Disgorgement Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (i) the amount paid or credited to each fund or limited partner; (ii) the date of each payment or credit; (iii) the check number or other identifier of money transferred or credited to the fund or limited partner; and (iv) any amounts not distributed to be forwarded to the Commission for transfer to the United States Treasury. Respondents shall submit the final accounting and certification, together with proof and supporting documentation of such payments and credits in a form acceptable to Commission staff, under a cover letter that identifies AM V, AM VI, AM VII and ACM as the Respondents in these proceedings and the file number of these proceedings to Anthony S. Kelly, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010. Any and all supporting documentation for the accounting and certification shall be provided to

the Commission staff upon request. Once the Commission approves the final accounting, Respondents shall pay any amounts that have not been distributed to the Commission for transmittal to the United States Treasury.

C. Respondents AM V, AM VI, AM VII and ACM shall pay, jointly and severally, within ten (10) days of the entry of this Order, a civil monetary penalty in the amount of \$12,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. 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

Payment by check or money order must be accompanied by a cover letter identifying AM V, AM VI, AM VII and ACM 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 Anthony S. Kelly, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5010.

D. Respondents acknowledge that the Commission is not imposing a civil penalty in excess of \$12,500,000 based upon their cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondents knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondents, petition the Commission to reopen this matter and seek an order directing that the Respondents pay an additional

civil penalty. Respondents may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary