UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99499 / February 9, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6548 / February 9, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21848

In the Matter of **Lincoln Financial Advisors Corporation and Lincoln Financial Securities Corporation,** **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 Lincoln Financial Advisors Corporation ("LFA") and Lincoln Financial Securities Corporation ("LFS") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("Offers") 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' Offers, 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 role 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 failure of LFA and LFS employees throughout the firms, including at senior levels, to adhere to certain of these essential requirements and the firms' own policies. Using their personal devices, these employees communicated both internally and externally by personal text messages ("off-channel communications").

3. From at least January 2019, LFA and LFS employees sent and received off-channel communications that related to the broker-dealer businesses operated by LFA and LFS and with respect to LFA's and LFS's investment advisory businesses related to recommendations made or proposed to be made and advice given or proposed to be given. Respondents did not maintain or preserve the substantial majority of these written communications. Respondents' failures were firm-wide, and involved employees at various levels of authority. As a result, LFA and LFS violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder and Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. Respondents' supervisors, who were responsible for supervising junior employees, routinely communicated off-channel using their personal devices. In fact, senior managers and department heads responsible for supervising junior employees themselves failed to comply with Respondents' policies by communicating using non-firm approved methods on their personal devices about Respondents' broker-dealer and/or investment adviser businesses, as applicable.

5. Respondents' widespread failure to implement their policies and procedures that prohibit such communications led to their failure 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 that their employees sent and received related to the broker-dealer and investment adviser businesses, LFA received and responded to Commission subpoenas for documents and/or records requests in numerous Commission investigations. As a result, LFA's

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

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 will retain an independent compliance consultant to review and assess Respondents' remedial steps relating to their recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondents

8. **Lincoln Financial Advisors Corporation** is an Indiana corporation with its principal office in Fort Wayne, Indiana and is registered with the Commission as a broker-dealer and investment adviser. It is an indirect subsidiary of Lincoln National Corporation, a holding company headquartered in Radnor, Pennsylvania and incorporated in Indiana.

9. **Lincoln Financial Securities Corporation** is a New Hampshire corporation with its principal office in Fort Wayne, Indiana and is registered with the Commission as a broker-dealer and investment adviser. It is a subsidiary of Lincoln National Corporation, a holding company headquartered in Radnor, Pennsylvania and incorporated in Indiana.

Recordkeeping Requirements under the Exchange and Advisers Acts

10. 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, such records as necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Exchange Act and the Advisers Act.

11. The Commission adopted Rule 17a-4 under the Exchange Act and Rule 204-2 under the Advisers Act 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 Section 17(a)(1) of the Exchange Act, including 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 firm's 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).

LFA's and LFS's Policies and Procedures

15. LFA and LFS 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. LFA and LFS 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 firm-approved communications methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as 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 Respondents' communications policies and adherence to Respondents' books and recordkeeping requirements. Supervisory policies notified employees that electronic communications were subject to surveillance by LFA and LFS. LFA and LFS had procedures for all employees, including supervisors, requiring annual self-attestations of compliance.

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

LFA's and LFS's Recordkeeping Failures Across Their Businesses

20. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. LFA and LFS cooperated with the investigation by voluntarily interviewing a sampling of senior personnel and gathering and reviewing messages found on the individuals' personal devices. These personnel included senior leadership, such as department heads and vice presidents.

21. The Commission staff's investigation uncovered pervasive off-channel communications at all seniority levels of Respondents' broker-dealers. In addition, the Commission staff's investigation uncovered the use of off-channel communications within Respondents' investment advisers. The investigation determined that most broker-dealer and investment adviser personnel sampled had engaged in at least some level of off-channel communications. Overall, these personnel sent and received numerous off-channel communications, involving other LFA and LFS personnel and external contacts in the securities industry. Within LFA and LFS, significant numbers of senior leadership participated in off-channel communications.

22. From at least January 2019, LFA and LFS personnel sent and received off-channel messages that concerned the businesses of the broker-dealers. During this period, LFA and LFS investment adviser personnel sent and received off-channel messages related to, among other things, providing and recommending investment advice to clients.

23. For example, from September 2, 2021 to August 31, 2022, an LFA vice president who was also registered with LFS exchanged numerous off-channel messages with at least 55 LFA and LFS colleagues, including with junior employees under their supervision. These messages related to the broker-dealers' businesses as such.

24. In addition, from September 1, 2021 to August 31, 2022, an LFA vice president exchanged numerous off-channel messages with at least 45 LFA colleagues and at least one external contact in the securities industry. Within LFA, this vice president communicated off-channel with junior employees under their supervision. These messages related to the broker-dealer's business as such.

25. As another example, in December 2022, investment adviser personnel at LFA and LFS exchanged off-channel messages discussing an investment trading strategy for an advisory client's account.

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

26. Between January 2019 and the present, LFA received and responded to Commission subpoenas for documents and/or records requests in Commission investigations. By failing to maintain and preserve required records relating to their businesses, LFA likely deprived the Commission of these off-channel communications in various investigations.

LFA's and LFS's Violations and Failure to Supervise

27. As a result of the conduct described above, from at least January 2019 through the date of this Order, LFA and LFS willfully[2] violated Section 17(a) of the Exchange Act and Rule

[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act "'means no more than that the person charged with the duty knows what he is doing.'" *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir 2000) (quoting

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 its business as such.

28. As a result of the conduct described above, from at least January 2019 through the date of this Order, LFA and LFS 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.

29. As a result of the conduct described above, LFA and LFS 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.

30. As a result of the conduct described above, LFA and LFS failed reasonably to supervise their employees with a view to preventing or detecting certain of their 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.

LFA's and LFS's Remedial Efforts

31. In determining to accept the Offers, the Commission considered steps promptly undertaken by LFA and LFS prior to and after being approached by Commission staff, including rolling out an on-channel texting application to LFA and LFS employees in June 2018, and cooperation afforded the Commission staff.

Undertakings

32. 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:

33. Independent Compliance Consultant.

a. LFA and LFS shall each retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant")

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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by LFA and LFS.

b. LFA and LFS will oversee the work of the Compliance Consultant.

c. LFA and LFS 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. LFA and LFS shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

i. A comprehensive review of LFA's and LFS's supervisory, compliance, and other policies and procedures designed to ensure that LFA's and LFS's 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 LFA and LFS 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 LFA and LFS 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 LFA and LFS 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 LFA and LFS have begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that LFA and LFS personnel will use the technological solutions going forward and a review of the measures employed by LFA and LFS to track employee usage of new technological solutions.

v. An assessment of the measures used by LFA and LFS 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 LFA's and LFS's 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 LFA's and LFS's electronic communications surveillance routines to ensure that electronic communications through approved

communications methods found on Personal Devices are incorporated into LFA's and LFS's overall communications surveillance program.

vii. A comprehensive review of the framework adopted by LFA and LFS to address instances of non-compliance by LFA and LFS employees with LFA's and LFS's policies and procedures concerning the use of Personal Devices to communicate about LFA and LFS business in the past. This review shall include a survey of how LFA and LFS determined which employees failed to comply with LFA and LFS 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. LFA and LFS 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 each of LFA and LFS and to the Commission staff (the "Report"). LFA and LFS 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 LFA's and LFS's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to LFA's and LFS's policies and procedures.

e. LFA and LFS 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 the Report, LFA and LFS shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that LFA and LFS consider to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that LFA and LFS consider unduly burdensome, impractical, or inappropriate, LFA and LFS 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 LFA's and LFS's policies or procedures on which LFA, LFS, and the Compliance Consultant do not agree, LFA, LFS, 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 LFA, LFS, and the Compliance Consultant, LFA and LFS shall require that the Compliance Consultant inform LFA, LFS, and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that LFA and LFS consider to be unduly burdensome, impractical, or inappropriate. LFA and LFS shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between LFA, LFS, and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, LFA and LFS shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

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

h. LFA and LFS 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. LFA and LFS 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. For the period of engagement and for a period of two years from completion of the engagement, LFA and LFS shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

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

34. One-Year Evaluation. LFA and LFS shall each require the Compliance Consultant to assess LFA's and LFS's 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 33.d above. LFA and LFS shall require this review to evaluate LFA's and LFS's progress in the areas described in Paragraph 33.c.i-vii above. After this review, LFA and LFS shall require the Compliance Consultant to submit a report (the "One Year Report") to each of LFA and LFS and the Commission staff and shall ensure that the One Year Report includes an updated assessment of LFA's and LFS's 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.

35. Reporting Discipline Imposed. For two years following the entry of this Order, LFA and LFS shall notify the Commission staff as follows upon the imposition of any discipline imposed by LFA and LFS, 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 LFA's and LFS's 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.

36. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, LFA and LFS will each also have their respective Internal Audit function conduct a separate audit(s) to assess LFA's and LFS's progress in the areas described in Paragraph 33.c.i-vii above. After completion of this audit(s), LFA and LFS shall ensure that Internal Audit submits a report to each of LFA and LFS and to the Commission staff.

37. Recordkeeping. LFA and LFS shall each 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.

38. 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.

39. Certification. LFA and LFS shall each 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 Anne C. McKinley, Assistant Regional Director, Division of Enforcement, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604, or such other person as the Commission staff may request, 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' Offers.

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. Respondents 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. Respondents 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 32 to 39 above.

E. Respondents shall, jointly and severally, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $8,500,000 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 LFA and LFS as the 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 Anne C. McKinley, Assistant Regional Director, Division of Enforcement, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

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