UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6303 / May 5, 2023

INVESTMENT COMPANY ACT OF 1940
Release No. 34908 / May 5, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21406

In the Matter of

JOSEPH MASELLA,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY 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 Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Joseph Masella ("Masella" or "Respondent").

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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 203(f) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company 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 Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise from violations by the NYSA Fund (the "Fund"), a formerly registered investment company, and Masella, formerly an interested trustee on the Fund's board of trustees, relating to the Fund's failure to comply with the liquidity risk management practices set forth in Rule 22e-4 under the Investment Company Act (the "Liquidity Rule"). From June 2019 to June 2020, the Fund violated the Liquidity Rule and Rule 30b1-10 under the Investment Company Act because it classified a large, restricted private placement investment it held as "less liquid" rather than "illiquid." Although more than 15% of its net assets were in illiquid investments, it failed to comply with applicable reporting and filing requirements. Pinnacle Advisors, LLC ("Pinnacle"), the Fund's adviser and designated administrator of its liquidity risk management program ("LRMP"), and its principals were responsible for monitoring the liquidity of the Fund's investments, classifying the investments under Rule 22e-4(b)(1), and making the required filings on behalf of the Fund with the Commission pursuant to Rule 30b1-10. The Fund's trustees, including Masella, were responsible for exercising oversight of the Fund's LRMP under the Liquidity Rule.

2. Masella, who knew the private placement shares were illiquid and restricted, worked with Pinnacle and its principals to classify the investment as "less liquid" rather than "illiquid." Masella willfully counseled the Fund that the "less liquid" classification was justified based on the portfolio manager's purported belief that he could sell the shares in seven calendar days. Masella knew, or should have known, that the portfolio manager's belief was not reasonable because it was based on purported facts that Masella knew, or should have known, were not well founded or supported, including that there were contractual limitations on the transfer of the shares, there was no trading market for the shares, and the Fund's counsel and auditors both advised that the shares were illiquid. Masella failed to exercise reasonable oversight of the LRMP and as a result, also caused the Fund's violations of Rule 22e-4(b)(1).

Respondent

3. **Joseph Masella** was a trustee of the NYSA Fund from 1997 to 2021, and from 2011 to 2021, served as Chief Executive Officer ("CEO") of an affiliate of Pinnacle Advisors, LLC. The affiliate is an investment adviser registered with the Commission. Masella, age 73, is a

[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.

resident of Bernhards Bay, New York, and an attorney licensed (inactive) in New Jersey. Masella was not legal counsel to the Fund and did not provide legal services to the Fund.

Other Relevant Entities

4. **The NYSA Fund** was the sole series of the NYSA Series Trust (the NYSA Fund and the NYSA Series Trust are referred to collectively as the "NYSA Fund"). The NYSA Fund was an open-end registered investment company until September 2020 when it liquidated most of its assets, deregistered as an investment company, and became a liquidating trust. In an annual shareholder report filed with the Commission in July 2019 for the fiscal year ending March 31, 2019, the NYSA Fund reported total assets of approximately $1.89 million. In December 2019, the NYSA Fund filed a semi-annual report with the Commission reporting approximately $1.61 million in total assets.

5. **Pinnacle Advisors, LLC** ("Pinnacle"), is a New York limited liability company with its principal place of business in East Syracuse, New York, and has been registered with the Commission as an investment adviser since 1996. Pinnacle is owned by six individuals, including the Fund's portfolio manager and Chief Compliance Officer ("CCO"). Masella is not one of the six individuals who own Pinnacle. Pinnacle had approximately $517,000 in assets under management as of February 2022. Pinnacle's sole client is the NYSA Fund, now a liquidating trust. Pinnacle was the administrator of the NYSA Fund's LRMP.

Background

The Liquidity Rule: Liquidity Risk Management Programs

6. The Liquidity Rule requires open-end funds to manage liquidity risk by, among other things, establishing a LRMP, the written framework to classify the liquidity of portfolio investments "using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations," and according to defined categories. Rule 22e-4(b)(1)(ii). An "illiquid investment" is defined as "any investment the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without significantly changing the market value of the investment." Rule 22e-4(a)(8). A "less liquid investment" is an investment that can be sold or disposed of in seven days "but where the sale or disposition is reasonably expected to settle in more than seven calendar days." Rule 22e-4(a)(10).

7. A fund's board and the administrator of the LRMP (the "Administrator") are responsible for managing the fund's liquidity risk. "[T]he role of the board under the rule is one of general oversight, and consistent with that obligation we expect that directors will exercise their reasonable business judgment in overseeing the program on behalf of the fund's investors." *See* Final Rule Release No. 33-10233, *Investment Company Liquidity Risk Management Programs*, October 2016, at § III.H, p. 249 ("Adopting Release"). Rule 22e-4(b)(2) expressly requires the board to approve the LRMP, approve the designation of the Administrator, and review, no less

frequently than annually, a written report prepared by the Administrator. "Given the board of directors' historical oversight role, the Commission continues to believe it is appropriate to require a fund's board to oversee the fund's liquidity risk management program. The rule's requirements are designed to facilitate the board's oversight of the adequacy and effectiveness of the fund's liquidity risk management program." Adopting Release, at p. 250. In addition to the board's general oversight responsibility for the LRMP under the Liquidity Rule, during the relevant time period, the Fund's Statement of Additional Information ("SAI"), a part of the Fund's registration statement, stated: "Under the supervision of the Board of Trustees, the Adviser determines the liquidity of the Fund's investments."

8. By June 1, 2019, the Fund was required to adopt and implement the LRMP, designate the program's Administrator, and make an initial assessment of its liquidity risk. *See* Rule 22e-4(b)(1)(i)-(ii). It was also required to determine which of its investments were "illiquid," as defined in the rule, for purposes of complying with the rule's 15% limit on illiquid investments that are assets and making related board notifications and filings with the Commission. *See* Interim Final Rule, *Investment Company Liquidity Risk Management Programs*, Rel. IC-33010 (Feb. 22, 2018) (extending by six months the compliance date for certain requirements under Rule 22e-4, but not the 15% illiquid investment limit, aspects of the portfolio classification requirement relating to implementation of that limit, or the related board and Commission reporting requirements). While the Administrator was not required to implement the liquidity classification required by Rule 22e-4 for the Fund's entire portfolio of investments until December 1, 2019, if on June 1, 2019 or at any time thereafter, the Fund's illiquid investments that were assets exceeded 15% of net assets, then the Fund was required, within one business day, to have the Administrator report such an occurrence to the board—"with an explanation of the extent and causes of the occurrence, and how [the Fund] plan[ned] to bring the illiquid investments to or below 15% of net assets within a reasonable period of time"—and also make a confidential filing with the Commission on Form N-LIQUID, reporting the breach. *See* Rule 30b1-10. If the Fund's illiquid investments remained above 15% of net assets 30 days from the occurrence (and at each consecutive 30 day period thereafter), the Fund's board was required to assess whether the plan presented to it continued to be in the best interest of the Fund. *See* Rule 22e-4(b)(1)(iv)(A) & (B).

9. In 2018 and early 2019, outside counsel for the Fund repeatedly advised the Fund board and Pinnacle of the Liquidity Rule's requirements and urged them to develop a strategy for compliance. In a memo to the board dated February 24, 2019, she reminded the board that the Fund would be required to adopt and implement a LRMP on or before June 1, 2019, and that the board would have oversight responsibility for the LRMP. At the March 8, 2019 board meeting, she again reminded the board and Pinnacle that the Fund was "well over" the 15% illiquid investment limit, and if that remained the case on June 1, "management of the fund would be required to provide the trustees with a plan for restructuring the portfolio to bring that percentage down to 15%." On May 14, 2019, she advised Masella and Pinnacle:

> [T]he Fund has known since October 2016 that it would have to pare down its position in illiquid securities. . . . [R]egulators could take the position that the Fund has been on notice that it needed to restructure its portfolio since 2016

and, if the Fund has not divested a sufficient portion of its illiquid investments by June 1, the Fund will be viewed as having disregarded the rule.

The Fund's Illiquid Investments Exceeded 15%

10. From June 1, 2019 through at least June 16, 2020, the Fund held approximately 21% to 26.38% of its net assets in illiquid investments that were assets. The largest illiquid investment was 84,332 shares of a private company (the "Company") that the Fund had purchased in private placement transactions during 2007 to 2009 (the "Company Shares") and which, as of June 1, 2019, represented approximately 23.45% of the Fund's net assets.

11. The Company Shares were restricted from resale under the Securities Act of 1933, and contractual provisions in the Company's operating agreement also limited transferability. Both the Company and its shareholders had a right of first refusal ("ROFR"). This required any shareholder proposing to sell its shares, having received a *bona fide* purchase offer, to first make the shares available for purchase by the Company, with an exercise period of fifteen business days. If the Company did not intend to exercise its right to purchase the shares, it had to inform the remaining shareholders within three business days after the end of the Company's exercise period; the remaining shareholders then had a ten business day exercise period in which to purchase the offered shares. In addition, pursuant to a co-sale provision in the Company's operating agreement, all shareholders had the right to join in the selling opportunity by selling a pro rata portion of their own shares to the prospective buyer, on the same terms and conditions as agreed to between the selling shareholder and the prospective buyer.

12. The Fund board was responsible for fair valuing the Fund's illiquid investments and it delegated that responsibility to its valuation committee, comprised of the two independent trustees and the Fund's CCO. Masella was not a member of the valuation committee. The committee, however, presented its valuation recommendations for the Company Shares at the board's quarterly meetings, which Masella attended. In addition, at most board meetings, the Fund's portfolio manager led a discussion regarding the Fund's investment in the Company. At all times before and after June 1, 2019, the Fund reported the restricted Company Shares as illiquid, in accordance with generally accepted accounting principles, in its audited financial statements and shareholder reports.

13. In letters dated April 2, 2019 and May 17, 2019, in response to questions from the Commission's Division of Investment Management Disclosure Review and Accounting Office ("IM staff") about how the Fund planned to comply with the Liquidity Rule, the Fund told IM staff that the Company Shares were subject to transfer restrictions and were an illiquid investment "as that term is defined in Rule 22e-4." Masella worked with Fund counsel, Pinnacle, and Pinnacle's principals to prepare the letters.

14. On or around May 16, 2019, the Company's CEO told the board, Pinnacle, and Fund counsel that the Company would not exercise its ROFR to purchase some or all of the Company Shares held by the Fund, and on May 22, 2019, he sent the Company's operating

agreement to Pinnacle's CCO (who also served as the Fund's CCO), pointing out the transfer restrictions. On May 31, 2019, Fund counsel emailed Masella and Pinnacle to recommend that the Fund classify the Company Shares as illiquid, based on the legal and contractual restrictions on transfer, the fact that the Company was not interested in re-purchasing any of the Company Shares held by the Fund, the lack of trading market, and "the fact that we have already signaled to the SEC that we cannot readily sell a sufficient number of shares to bring the total percentage of illiquid investments to below 15% . . . ."

The Fund Violated the Liquidity Rule by Failing to Classify the Company Shares as "Illiquid" and Misled IM Staff

15. In late May 2019, Masella counseled Pinnacle that the Fund could claim the Company Shares were "less liquid" if (a) the Fund were to offer the shares to the Company or a prospective buyer at or below the Fund's current carrying value or the Company's then-offering price; and (b) the Fund inquired of the Company whether such an offer or sale would cause the Company to significantly change the price at which it was offering shares, and the Company responded that such an offer or sale by the Fund would not cause it to significantly change the offering price. Pinnacle, counseled by Masella, decided that the Fund would classify the Company Shares as "less liquid" rather than "illiquid" under the Liquidity Rule based upon the portfolio manager's belief that he could sell the shares within seven days because customers of the Fund's affiliated broker-dealer had purportedly expressed interest in buying the shares, and the purported disclosure of a pending transaction between the Company and a third-party had purportedly generated renewed interest in the Company.

16. The Fund, however, had made no offers to sell the Company Shares, and the portfolio manager had no commitment from any potential buyers who had been informed of the transfer restrictions and co-sale provisions, and were ready and willing to purchase the Company Shares. In addition, in May 2019 the Company had specifically asked Pinnacle not to disclose the pending transaction with a third-party because it had not yet been finalized. On June 7, 2019, after receiving a draft copy of the Form N-LIQUID, Masella instructed the Fund's and Pinnacle's CCO not to file the Form N-LIQUID since it would be unnecessary in light of the "less liquid" classification. Masella then called the independent trustees to inform them that the Fund would classify the restricted shares as "less liquid."

17. In June 2019, the Fund's auditors told Masella and Pinnacle's CCO that they did not believe the Company Shares could be sold within seven days, and that they did not agree that the Fund's holding of Company Shares was "less liquid."

18. In the first half of June, Masella, Fund counsel, and Pinnacle's CCO exchanged multiple drafts of the LRMP. The draft LRMP required the Administrator to make the liquidity classification using "relevant market, trading, and investment specific considerations," and cited specific factors noted in the Adopting Release when determining whether an investment is illiquid, including "Restrictions on Trading and Limitations on Transfer." Those drafts included the statement that the board "acknowledges that it has oversight responsibility for the Program as well

as general oversight responsibility for the risks attendant to operations of the Fund." On December 13, 2019, the board adopted a version of the LRMP that excluded this statement.

19. On or around June 10 and June 24, 2019, Pinnacle and Masella drafted and sent two additional letters (virtually identical with the June 24, 2019 letter attaching the LRMP) to IM staff containing false and/or incomplete information to justify the "less liquid" classification of the Company Shares. The letters were signed by the Fund's portfolio manager and President. The letters:

- claimed that the Fund could sell the shares within seven calendar days or less without disclosing the transfer restrictions, the fifteen-day and ten-day ROFR exercise periods, or the co-sale provision;

- claimed that the ROFR provision represented another potential buyer for the Company Shares held by the Fund, without disclosing that the Company's CEO had told Pinnacle and the board on or around May 16, 2019 that the Company would not purchase any of these shares;

- claimed that the Company had "recently sold its shares" at a price higher than the Fund's valuation of the shares, which was misleading because, as Pinnacle and Masella knew, or should have known, the Company had last issued shares in August 2018;

- claimed that customers of an affiliated broker-dealer had expressed interest in purchasing the Company's shares, when, in fact, none had done so, as the Fund had not attempted to sell the Company Shares; and

- claimed that the news of an impending sale of intellectual property by the Company had "stimulated interest in the company," but omitted that the potential sale had not been made public. In May 2019, Masella had noted to Fund counsel and Pinnacle that this would undercut arguments the Fund had previously made to IM staff: "[The Company] wants no public disclosure of its pending product transaction. Given that the pending transaction was the essence of our argument to the SEC to allow the Nysa Fund to maintain ownership of [the Company Shares], it looks like we'll need to reconsider our position."

20. Following Pinnacle's decision to not follow the advice of Fund counsel regarding the liquidity classification, Fund counsel resigned at the June 14, 2019 board meeting. At the meeting, Pinnacle's CCO informed the board that the "less liquid" classification for the Company Shares had been "presented to the SEC," and that he and the portfolio manager would "present the classification," as well as discuss the LRMP, at the September 2019 board meeting. The board appointed Pinnacle to serve as the LRMP Administrator and appointed the Fund's portfolio manager and CCO to implement the LRMP.

21. At the September 2019 board meeting, Masella reviewed for the board the sequence of events that led to the "less liquid" classification for the Company Shares. One of the

independent trustees indicated that he understood from the Fund's auditors (who were not present at the meeting) that the asset was illiquid, and requested an update from the auditors as to their opinion on the classification. New Fund counsel and Pinnacle's CCO spoke with the Fund's auditors on or around December 30, 2019, and the auditors continued to believe that the Fund's Company Shares were illiquid.

22. On December 20, 2019, following a conference call in which the board and new Fund counsel participated, Masella, on behalf of the board and new Fund counsel, requested that the Administrator prepare a memorandum presenting and explaining Fund management's position on the liquidity classification of the Company Shares. On December 22, 2019, the Administrator provided the board with a memorandum recommending that the Company Shares be classified as "less liquid." While the memorandum described potential buyers of the Company Shares as "individual accredited investors who are clients of the Fund's affiliated broker-dealer," the Fund had not, in fact, identified any potential buyers who had been informed of the transfer restrictions and co-sale provisions, and were ready and willing to purchase the Company Shares. And as a general matter, the memo repeated virtually verbatim the factors set forth in the Fund's June 10, 2019 and June 24, 2019 letters to IM staff. The memo referred to the intellectual property sale entered into between the Company and a third-party, even though the third-party had terminated that deal in October 2019. On December 23, 2019, the board agreed that the Company Shares should be classified as "less liquid."

In June 2020, the Fund Re-Classified the Company Shares as Illiquid, Filed Form N-LIQUID, and Began Winding Down

23. On February 20, 2020, Fund counsel advised Pinnacle that the Fund would be unable to cross-trade the Company Shares pursuant to Section 17(a) and related exemptive rules under the Investment Company Act because the Fund did not have an independent valuation for the shares. At a board meeting on the following day, February 21, 2020, Fund counsel also advised the board that the Fund needed to consider classifying the Company Shares as illiquid under the Liquidity Rule because the Fund could not likely sell the Company Shares within a seven-day period. In the immediate aftermath of the February board meeting, the Administrator took no steps to change the liquidity classification or file Form N-LIQUID.

24. In April 2020, the Fund's auditors resigned from auditing the Fund due to concerns about the valuations of the illiquid securities it held and material weakness in its internal controls based on Pinnacle's "gross negligence" in performing asset diversification tests in 2018 and 2019, resulting in the Fund losing its regulated investment company status under Subchapter M of the Internal Revenue Code. The Fund's refusal to follow counsel's advice on the liquidity classification also played a role in the auditors' internal controls conclusion and decision to resign from the engagement.

25. In May and early June 2020, Fund counsel twice reminded the Administrator to review the LRMP to determine whether the Fund needed to file Form N-LIQUID, and to discuss it

with the board. The Administrator took no steps in response to Fund counsel's emails to change the liquidity classification of the Company Shares or file the Form N-LIQUID.

26. On or around June 9 and June 11, 2020, IM staff asked Masella about the status of the Fund's Form N-LIQUID filing and informed him that the Fund would need to enhance its prospectus disclosures about the special risk factors relating to illiquid securities, and would have to sticker the prospectus, *i.e.*, attach a notice to the prospectus calling attention to the changes. IM staff also suggested that the Fund's annual report discuss the risks to shareholders presented by the Company Shares, among other things.

27. On June 16, 2020, Pinnacle's CCO filed the Form N-LIQUID on behalf of the Fund, which indicated that the Company Shares were illiquid and exceeded 15% of net assets as of February 21, 2020.

28. After a call with IM staff on or around June 30, 2020, the Fund stopped issuing its own shares to investors. At a board meeting on August 28, 2020, the board approved a wind-down proposal and on September 8, 2020, the Fund sold all of its liquid assets. On September 9, 2020, the Fund filed a Notice of Application for Deregistration under Section 8(f) of the Investment Company Act, and on September 29, 2020, the Commission issued a deregistration order.

29. To date, the liquidating trust has not sold the Company Shares, and as a consequence, the liquidating trust has made no distributions to former shareholders of the Fund.

30. As a result of the conduct described above, Masella caused and willfully[2] counseled the Fund's violations of Rule 22e-4(b)(1) of the Investment Company Act, which requires an open-end registered investment company to adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk, including the assessment, management, and periodic review of liquidity risk, and, using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations, classify each of its portfolio investments as a highly liquid investment, moderately liquid investment, less liquid investment, or illiquid investment, and review its portfolio investments' classifications at least monthly and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of the classifications, and take certain actions if it has more than 15% of its net assets in illiquid investments that are assets.

[2] "Willfully," for purposes of imposing relief under Section 203(f) of the Advisers Act and Section 9(b) of the Investment Company Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). 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).

Undertaking

Respondent has undertaken to:

31. Provide to the Commission, within thirty (30) days after the end of the six (6) month suspension and prohibition period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

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 Section 203(f) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Rule 22e-4 under the Investment Company Act.

B. Respondent be, and hereby is:

> suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter,

for a period of six (6) months, effective on the second Monday following the date of entry of this Order.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. 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) 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 Joseph Masella as a 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 Hane L. Kim, Assistant Regional Director, U.S. Securities and Exchange Commission, Division of Enforcement, 100 Pearl St, Suite 20-100, New York, NY 10004-2616.

D. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, he shall not argue that he is entitled to, nor shall he 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.

E. Respondent shall comply with the undertaking enumerated in Section III, paragraph 31 above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary