involved the defendant entities entering into financing agreements with two primary dealers to ensure that the supply of April Notes available to shorts in the secondary markets would be reduced.

SMC concentrated the financing of its position with one dealer, and actively directed that dealer to withhold some or all of SMC's notes from the financing and cash markets. For example, SMC directed the dealer to refuse to make its notes available for special repo transactions unless the repo rate had dropped below a certain level. At other times, SMC ordered the dealer to refuse to make the notes available at all for special financing transactions for periods of time ranging from hours to days, with the intent and effect of causing unmet demand that forced rates lower. For its part, Caxton financed a portion of its April Notes in a series of transactions with another dealer in a manner that largely caused a quantity of the notes to be withheld from the cash market. Beginning in early August, 1991, SMC moved the majority of its position to the dealer already financing the majority of the Caxton position. This resulted in a renewed concentration of the issue that enabled the dealer to drive down repo rates.

The coordinated withholding of supply allowed SMC and Caxton to enrich themselves at the expense of other market participants both as a result of low rates at which they were able to finance their securities and as a result of cash sales at prices that were inflated by the squeeze.

The conspiracy described above injured numerous persons who traded the April Notes, especially those with short positions, by artificially inflating prices for that issue in the cash market and repo rates in the financing market. Further, the conspiracy had a dangerous probability of damaging the Treasury of the United States. As noted in the *Joint Report on the Government Securities Market* issued by the Treasury, the SEC and the Federal Reserve Board, an acute, protracted squeeze resulting from illegal coordinated conduct, such as the one alleged here, ''can cause lasting damage to the marketplace, especially if market participants attribute the shortage to market manipulation. Dealers may be more reluctant to establish short positions in the future, which could reduce liquidity and make it marginally more difficult for the Treasury to distribute its securities without disruption.''[5]

III

Explanation of the Proposed Final Judgment

The United States and the defendant entities have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Paragraph VIII.E. of the proposed Final Judgment sets forth such a finding.

The United States submits that the proposed Final Judgment is in the public interest. The proposed Final Judgment contains injunctive provisions that are remedial in nature and designed to assure that the defendant entities will not engage in the future in the same or similar anticompetitive practices as those employed in furtherance of their conspiracy.

In addition, the proposed Final Judgment provides for a substantial asset forfeiture that will act as a deterrent to future illegal conduct and serve as a warning to others of the possible consequences of similar illegal behavior. Pursuant to the proposed Final Judgment and the Settlement Agreements attached hereto, SMC and Caxton will each pay $12.5 million (plus interest accruing at a rate of 5.75% to the date of payment) to the United States within five business days of the entry of the Final Judgment. This payment reflects a cash settlement in lieu of forfeiture of the securities held pursuant to the alleged conspiracy.

A. Global Settlement of Charges

On the same date that this action was filed, the Department of Justice (''Department'') and the Securities and Exchange Commission (''SEC'') announced a global settlement with SMC and Caxton that resolves the defendant entities' liability under the antitrust and securities laws with respect to the conduct alleged in the complaints filed by the Department and the SEC. The terms of the settlement provide that SMC pay a total of $40 million—$19 million in fines and forfeitures and establish a $21 million disgorgement fund to be used to compensate victims of its misconduct. The settlement also provides that Caxton will pay a total of $36 million—$22 million in fines and forfeitures and establish a $14 million disgorgement fund.

B. Specific Injunctive Provisions

The proposed Final Judgment prohibits the defendant entities from agreeing with each other or with other persons to take certain actions affecting the markets for Treasury securities. The prohibited agreements are either impermissible under the antitrust laws, or were determined during the Department's three-year investigation of the Treasury securities markets to be significant mechanisms for facilitating collusion. The proposed Final Judgment, however, is not intended to discourage or prohibit normal communications between the defendant entities and other participants in the markets for Treasury securities. Traders in these markets often, and appropriately, exchange views about events that may affect interest rates, and consequently, the value of Treasury securities. Such an exchange of views, without more, is not ordinarily harmful to competition.

1. Section III, Applicability

The proposed Final Judgment applies to the defendant entities and each of their subsidiaries, officers, directors, employees, agents, successors and assigns. It also applies to any entity for or in which any person who is a shareholder in a defendant entity as of the date of entry of the Final Judgment engages in or directs asset management or investment advisory activities, whether directly or indirectly, that involve transactions in the cash or financing markets (''related entity''); and to all persons acting in concert with any defendant entity that have actual notice of the Final Judgment. But the proposed Final Judgment does not apply to any fund or other entity whose assets are managed or invested in whole or in part by a defendant entity or by a related entity.

This applicability provision ensures that the Final Judgment will apply not only to the defendant entities, but also to any related entity or any person

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the April-Note issue, which would have reduced or eliminated their ability to control the supply of the issue. If the issue had been reopened, the Treasury would have auctioned more notes with the April Notes' CUSIP number, rather than auctioning notes with a new CUSIP. Reopening would have effectively flooded the secondary markets with increased supply of the issue, and would have eroded the market power the conspirators had obtained through their purchases of the April Notes.

[5] *See* Department of the Treasury, Securities and Exchange Commission, Board of Governors of the Federal Reserve System; *Joint Report on the Government Securities Market* at 10 (Jan. 1992).