

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-12400

In the Matter of)
)
)
PRUDENTIAL EQUITY GROUP, LLC,)
formerly known as PRUDENTIAL)
SECURITIES, INC.,)
)
Respondent.)

PROPOSED PLAN OF DISTRIBUTION

I. BACKGROUND

A. Description

1. This Plan of Distribution (“Plan” or “Distribution Plan”) proposes a methodology for distributing to investors \$270 million, and any interest or earnings thereon, paid by Prudential Equity Group, LLC, formerly known as Prudential Securities, Inc. (collectively, “PSI” or “Respondent”) in settlement of administrative proceedings concerning findings of deceptive market timing practices in the trading of mutual funds.

2. On August 28, 2006, Respondent consented to the entry of an Order by the Securities and Exchange Commission (“SEC” or “Commission”),¹ without admitting or denying the Order’s findings. The Order found, among other things, that beginning in at least September 1999 and continuing through at least June 2003, former registered representatives of PSI used deceptive trading practices to conceal their identities, and those of their customers, to evade mutual funds’ prospectus limitations on market timing.² The registered representatives’ deceptive practices included the use of multiple broker identifying numbers (known as Financial Advisor, or “FA” numbers) and multiple customer accounts; the use of accounts coded as confidential in PSI’s systems; and their use of “under the radar” trading to avoid notice by mutual funds.³ The Order further found as early as the fourth quarter of 1999, several mutual fund companies identified the registered representatives’ use of deceptive trading practices and notified PSI of the registered representatives’ conduct.⁴ Although the firm issued policies and procedures concerning market timing, these policies and procedures were ineffective in curtailing the registered representatives’ fraud and were largely not enforced.⁵ The Order also found that even in situations where PSI purportedly enforced any of these

¹ Order Instituting Administrative Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the “Order”), Release No. 34-54371 (August 28, 2006).

² Order at ¶ 4.

³ Order at ¶ 2.

⁴ Order at ¶ 3.

⁵ Order at ¶ 5.

policies, PSI senior officers undermined them by granting exceptions for PSI's largest producing registered representatives.⁶ Additionally, PSI repeatedly failed to deprive the registered representatives of their inappropriate use of hundreds of FA numbers, even though their use of multiple FA numbers was the primary means by which the registered representatives carried out their fraud.⁷

3. The Order also called for the establishment of a distribution fund for these monies and required Respondent to retain the services of an Independent Distribution Consultant ("IDC") acceptable to the staff of the Commission.⁸ The Order requires the IDC to develop a proposed Distribution Plan for the distribution of the \$270 million in disgorgement, and any interest or earnings thereon, according to a methodology developed in consultation with the staff of the Commission.⁹

4. In accordance with the terms of the Order,¹⁰ Respondent has provided all information requested for its review, including providing access to its files, books, records, and personnel. Also in accordance with the Order, Respondent is responsible for all costs and expenses associated with the development and implementation of the Distribution Plan, including the compensation of the IDC and of a tax administrator; the payment of taxes; and the payment of any distribution or consulting service fees that may be reasonably required by the IDC.¹¹

5. This submission serves as the proposed Plan of Distribution as required by the August 28, 2006 Order. The PSI Distribution Fund ("Fund") was established to provide for the ultimate distribution of the disgorgement funds to investors who were harmed by the conduct described in the Order. This Fund has been deposited at the U.S. Treasury Bureau of Public Debt ("Treasury") for investment in government obligations. Other than interest from these investments, it is not anticipated that the Fund will receive

⁶ Order at ¶ 5.

⁷ Order at ¶ 5.

⁸ Order at ¶ 50.

⁹ Order at ¶ 50c.

¹⁰ Order at ¶ 50b.

¹¹ Order at ¶ 50a.

additional funds. The Plan of Distribution for Fund monies is subject to approval by the Commission.

B. Appointment of Independent Distribution Consultant

6. Paragraph 50 of the Order requires Respondent to retain the services of an independent distribution consultant acceptable to the staff of the Commission in this matter. Accordingly, Respondent has retained Francis E. McGovern, Esq., a professor of law at Duke University, to be the Independent Distribution Consultant (“IDC”) for this matter.¹²

7. As the IDC, Professor McGovern has been asked to develop a Distribution Plan for the distribution of Fund monies according to a methodology developed in consultation with Respondent and acceptable to the staff of the SEC. In completing this engagement, Professor McGovern has been guided by the terms of the Order. Professor McGovern has developed this Plan in consultation with other Fund Family IDCs retained to effect distributions in other market timing cases, Commission staff, Respondent, and COMPASS LEXECON, an economics consulting firm retained by him in connection with this matter.

8. Under this Plan, Fund monies will be allocated to Eligible Mutual Funds¹³ according to a formula designed to capture the proportional dilution in such mutual funds relative to the dilution in all Eligible Mutual Funds. In other words, the total dilution ascribed to all Eligible Mutual Funds will be calculated, and, then, each Eligible Mutual Fund will be allocated its percentage of such total dilution amount. Allocations of Fund monies will be made from the \$270 million disgorgement amount paid by Respondent together with any interest or earnings thereon accrued by the Fund.

¹² Professor McGovern is widely published on the topics of alternative dispute resolution and case settlement. Professor McGovern also has broad experience advising courts and parties on settlement mechanisms and fund distribution.

¹³ See Defined Terms, Sec. II at ¶ 9.

II. DEFINED TERMS

9. This Distribution Plan makes use of a number of terms with specific meanings and references. Following is a list of definitions for the specific terms used herein.

“Approval Date” means the date on which the Commission issues an administrative order approving this Distribution Plan.

“Commission” or “SEC” means the United States Securities and Exchange Commission.

“Contemporaneous Accountholders” means shareholders of Eligible Mutual Funds that held shares during all or part of the Relevant Period.

“Distributable Amount” means \$270 million plus any earnings or interest thereon earned on the foregoing through the Approval Date.

“Plan” means this Plan of Distribution as developed by the Independent Distribution Consultant and approved by the Commission.

“Distribution to Contemporaneous Accountholders” means the method of distribution employed to distribute Fund monies to Contemporaneous Accountholders of select Eligible Mutual Funds.

“Eligible Mutual Funds” means those mutual funds that may have been affected by the conduct described in the Order during all or part of the Relevant Period and are eligible to receive a payment of at least \$1,000 from the Fund.

“Escrow Bank” means Deutsche Bank.

“Fund Family IDC” means the Independent Distribution Consultant retained by a family of mutual funds to effect the distribution of the fund family’s market timing distribution fund.

“IDC” or “Fund IDC” means Professor Francis E. McGovern, Esq., the Independent Distribution Consultant retained by the Respondent pursuant to the terms of the Order.

“LIFO” means last-in, first-out, an accounting convention used in this Distribution Plan.

“Order” means the Order Instituting Administrative Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 15(b) of the

Securities Exchange Act of 1934 against Prudential Equity Group, LLC, formerly known as Prudential Securities, Inc., dated August 28, 2006.

“Relevant Period” means September 1999 through at least June 2003, the period of the conduct described in the Order.

“Respondent” or “PSI” means Prudential Equity Group, LLC, formerly known as Prudential Securities, Inc., individually or in the aggregate.

“Settlement Amount” means the \$270 million paid by Respondent to the Commission in connection with the Order in this matter.

“Tax Administrator” means Damasco & Associates LLP, a certified public accounting firm, appointed by the Commission to administer taxes for the Fund in this proceeding.

“Transaction Database” means the database provided by Respondent to the IDC containing information regarding all mutual fund transactions effected by former PSI registered representatives during the Relevant Period.

III. ADMINISTRATION OF THE PLAN

A. Appointment of Administrator for the Fund

10. The Commission’s Order requires that the IDC submit the Distribution Plan “for the administration and distribution of disgorgement funds pursuant to Rules 1100-1106 [17 C.F.R. §201.1100-1106] of the Commission’s Rules on Fair Fund and Disgorgement Plans.”¹⁴ Accordingly, the IDC has proposed the retention of Rust Consulting, Inc., a services company well experienced in the distribution and administration of market timing fair funds, to act as the Fund Administrator (“Fund Administrator”). The Respondent will pay all fees and costs associated with the administration of the Plan of Distribution, including the fees of the Fund Administrator.

11. The Fund Administrator, working with the IDC, will be responsible for, among other things: assisting in the administration of the Fund, obtaining accurate mailing information for accountholders;¹⁵ preparing accountings; cooperating with the

¹⁴ Order at ¶ 50g.

¹⁵ The Fund Administrator will undertake accountholder identification and administrative support efforts only where distributions are made to Contemporaneous Accountholders.

tax administrator in providing the information necessary for income tax compliance; distributing money from the Fund to accountholders in accordance with this Plan; and setting up and staffing a call center to address accountholder questions or concerns regarding the distribution.

12. While the distribution is being implemented, the Fund Administrator will file an accounting during the first ten days of each calendar quarter. The Fund Administrator will submit a final accounting for approval by the Commission prior to termination of the Fund and discharge of the Fund Administrator.

13. In lieu of bond, the Fund Administrator maintains and will continue to maintain insurance until termination of the Fund. The current primary insurer, Illinois Unions Ins. Co. (ACE USA), is a company which, as of its most recent renewal, was rated ("A+ XV") by A.M. Best. The Fund Administrator maintains and will continue to maintain until termination of the Fund, errors and omissions coverage in the amount of \$10,000,000. It has a policy limit of \$10,000,000 per occurrence and an overall limit of \$10,000,000 during the life of the policy. The Fund Administrator also maintains an additional \$10,000,000 in excess errors and omissions coverage, which is provided by Lloyd's of London. Lastly, the Fund Administrator maintains a crime policy in the amount of \$5,000,000 per occurrence, which provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment or delivery of funds as a result of fraudulent input, preparation or modification of computer instructions, data or fraudulent electronic transmissions or communications. Under the Plan of Distribution, at no time will there be funds under the custody of the Fund Administrator, and the Fund Administrator will have only limited control over the funds. These policies have been provided to the Commission staff for review and have been deemed "not unacceptable."

14. Because the (1) the Fund Administrator will have no custody, and only limited control, of the Fund; (2) the Fund will be held by Treasury until immediately before transmittal of checks or electronic transfers to eligible investors; (3) upon transfer from Treasury, funds will be held in an escrow account, separate from Escrow Bank

assets, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to “positive pay” controls before honored by the Escrow Bank; and (5) both the Escrow Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud, the Plan proposes that the requirement that a bond be posted pursuant to Rule 1105(c) be waived by the Commission for good cause shown.

B. Appointment of the Tax Administrator

15. The Commission has appointed Damasco & Associates LLP as the Tax Administrator (“Tax Administrator”) of the Fund.¹⁶ The IDC, Fund Administrator, and Respondent will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling, and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by the Respondent.

C. Control of the Fund

16. Pursuant to the Order, on or about August 28, 2006, Respondent paid a total of \$270 million to the SEC. The Fund is currently deposited at the U.S. Treasury Bureau of Public Debt.

17. The Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5. The assets of the Fund are subject to the continuing jurisdiction and control of the Commission.

IV. DISTRIBUTION METHODOLOGY AND PROCEDURES

A. Objective of the Plan

18. The Order provides that the IDC shall develop a Distribution Plan for the distribution of the \$270 million in disgorgement, and any interest or earnings thereon,

¹⁶ See *Order Appointing Tax Administrator*, SEC Release No. 34-54470, September 19, 2006.

according to a methodology developed in consultation with and acceptable to the staff of the Commission.¹⁷ Accordingly, this Plan is designed to allocate Fund monies among those harmed by the conduct described in the Order during the Relevant Period. This allocation will be based upon an analysis that will reflect an estimate of the proportionate dilution in value of each Eligible Mutual Fund during the Relevant Period relative to the dilution in all Eligible Mutual Funds during that period. For example, if the total dilution calculated for all Eligible Mutual Funds during the Relevant Period is \$100, and the dilution calculated for a particular Eligible Mutual Fund during that period is \$10, then the Eligible Mutual Fund will be allocated 10% of the Distributable Amount as its Fund payment.

19. This Plan is designed to compensate those harmed by the practices described in the Order. While other Fund Family IDCs have access to detailed information regarding the accountholders within their respective fund families, such information is not similarly available to this IDC or the Respondent. Therefore, under this Plan, in order to maximize the distribution to Contemporaneous Accountholders, where practicable and feasible, the IDC will use an existing Fund Family IDC or a services company to obtain the data necessary to distribute Fund monies directly to Contemporaneous Accountholders of select Eligible Mutual Funds. In many instances, however, distributions to Contemporaneous Accountholders may not be practicable and feasible, and in these cases, the IDC will allocate Fund monies directly to the asset base of the Eligible Mutual Funds.

20. The IDC believes that the methodology described in this Plan is a fair and reasonable way in which to allocate Fund monies to those Eligible Mutual Funds harmed by the deceptive market timing practices, as are described more fully in the Order. The realized profits method, as described more fully in Paragraphs 30-34 below, will be used to allocate Fund monies to each Eligible Mutual Fund..

¹⁷ Order at ¶ 50.

B. Methodology Used to Develop Distribution Plan

Transaction Database

21. Respondent provided the IDC with a database containing information regarding mutual fund transactions (the “Transaction Database”) effected by former PSI registered representatives during the Relevant Period and executed by the Respondent. The Transaction Database identifies for each transaction the customer’s account number; account name; branch code; financial advisor, or “FA” number; the mutual fund traded; date of trade; number of shares traded, and the price at which the trade was executed.

22. All data provided to the IDC and any analyses produced by the IDC are strictly confidential and held exclusively by the IDC and those retained to assist the IDC.

Identifying Market Timers

23. The Order in this matter provides that former registered representatives of Respondent used deceptive market timing practices to conceal their identities, and those of their customers, to evade mutual funds’ prospectus limitations on market timing.¹⁸ The Order does not identify these registered representatives or their customers.

24. Because the Order does not identify any of the registered representatives who engaged in the conduct described therein, it was determined that for purposes of this Plan, a discrete group of former PSI registered representatives engaged in deceptive market timing practices during the Relevant Period (collectively, the “Described Market Timers”).

25. All customer accounts associated with the FA numbers assigned to the Described Market Timers were identified (collectively, the “Described Customer Accounts”).

¹⁸ Order at ¶ 2.

26. Described Customer Accounts with a redemption or exchange of \$10,000 or more of mutual fund shares in a given mutual fund family in any thirty-day period following a purchase of at least \$100,000 of mutual fund shares in the same fund family were included in the dilution analysis underlying this Plan (collectively, the “Included Accounts”). Overall, a total of approximately 1,200 customer accounts were identified, and all transactions associated with these Included Accounts formed the basis of the dilution analysis. During the Relevant Period, these Included Accounts were involved in transactions with approximately 1,600 different mutual funds.

Estimating Dilution Losses

27. This Plan uses dilution to measure the harm caused by the trades of the Included Accounts. Dilution is the difference in the wealth of shareholders in a mutual fund with market timer trades compared to the same fund without these same trades. “In other words, dilution is the amount of money necessary to return shareholders to where they would have been *but for* the flows from market timers.”¹⁹

28. As previously indicated, the allocation of Fund monies to mutual funds is based upon an estimate of the relative dilution in the value of the Eligible Mutual Funds. The amount of dilution that results from market timing activity is directly related to how a fund manager invests the influx of cash flows received from the market timers. A precise estimate of dilution losses would require access to information about how individual fund managers invested the cash received from individual market timers, *i.e.*, whether the fund managers invested the market timers’ cash on the same day or held the cash in reserve. Such information, however, is not available to the Respondent or to the IDC. In this case, because such information cannot be obtained, it was determined after careful review that the realized profits measure provides a fair and equitable method for allocating Fund monies consistent with the guidelines set forth in the Order.

29. A dilution analysis was conducted in the aggregate for all trades of the Included Accounts in order to allocate Fund monies to Eligible Mutual Funds. Due to

¹⁹ See Greene, Jason T. and Ciccotello, Conrad S., “Mutual Fund Dilution from Market Timing Trades” (September 27, 2004).

inadequacies inherent in the data, it was not economically practicable or feasible to identify precisely which trades were deceptive market timing trades as described in the Order.

Calculating Realized Profits

30. The implementation of the realized profits approach requires an adoption of several rules and conventions in order to ensure uniform treatment of transaction data and an accurate calculation of dilution under the Plan. As mentioned previously, all transactions associated with the Included Accounts for the Relevant Period were compiled and identified in the Transaction Database.

31. In order to calculate actual profits made by the Included Accounts, each sale made by an Included Account for a particular fund was matched to a purchase by the same account to create a “roundtrip” transaction. “Sells” were matched with “buys” using the last-in, first-out (“LIFO”) accounting convention. The LIFO convention makes the assumption that sells are processed in chronological order. Therefore, each sell was matched to the buy that immediately preceded it. One sell might have been matched to multiple buys, and many sells could have been matched to one buy to adjust for quantity differences. LIFO is generally accepted as a reasonable method and was thereby adopted for this Plan.

32. After examining the roundtrip transactions and conducting additional research, it was necessary to impose some basic limits to exclude certain market timer trades from the profits analysis. Market timers profited by moving money in and out of mutual funds quickly. The benefits of any market timing activity would be diluted over an extended holding period. Due to these facts, it was practical to limit the number of roundtrip market timer transactions included in the profits calculation, based upon the length of the roundtrip. Therefore, the Plan included in the profits analysis only those roundtrips that occurred within 30 days.

33. The profits of the Included Accounts must also reflect any applicable dividends and capital gain distributions that accrued to these accounts. Therefore, in

conducting the profit analysis, such dividends and distributions, if any, were added to the profits received by these accounts during that roundtrip.

34. Profits on a roundtrip for an account were calculated as the difference between the selling price and the purchase price multiplied by the number of shares traded in each roundtrip, plus any applicable dividends and capital gain distributions accrued during that roundtrip. The total dilution for each mutual fund was calculated by aggregating the profits (and losses) earned for all roundtrips by the Included Accounts for each mutual fund during the Relevant Period. If some accounts suffered losses on roundtrips, the losses were netted against the profits earned on other roundtrips during the Relevant Period. Profits of accounts were netted against losses of other accounts if and only if the roundtrips were in the same mutual fund.

35. The estimated total dilution of Eligible Mutual Funds was less than the amount available for distribution, and, therefore, a proportional gross up factor was applied to the allocation to all Eligible Mutual Funds.

C. Implementation of the Distribution Plan

36. The process of calculating the distributions to be made and of actually causing those distributions to occur will be implemented according to the steps outlined herein.

37. As mentioned in the previous section, estimates of dilution were calculated based on a realized profits approach, and payments were determined for each Eligible Mutual Fund. Because there are approximately 900 Eligible Mutual Funds, and the size of payments to the majority of these mutual funds is small relative to the number of Contemporaneous Accountholders within each mutual fund, the IDC has concluded that in many instances, distributions to such Contemporaneous Accountholders are not practicable or feasible. Therefore, in those cases, Fund payments will be deposited directly into each Eligible Mutual Fund's asset base.

38. In certain instances, based on a number of factors, the IDC, in his discretion, may determine that distribution to Contemporaneous Accountholders of an

Eligible Mutual Fund is practicable and feasible. These factors include, but are not limited to, the existence of a Fund Family IDC, the size of the payment to a mutual fund; the availability of Contemporaneous Accountholder data, the percentage of mutual fund Contemporaneous Accountholders who would receive a payment, the time that it would take to effect a distribution to Contemporaneous Accountholders, and cost estimates associated with a distribution to Contemporaneous Accountholders.

39. Accordingly, the IDC will employ the following two distribution methods in order to achieve a fair, equitable, reasonable, and timely means by which to distribute Fund monies.

Distributions to the Asset Base of Eligible Mutual Funds

40. As mentioned above, for many of the contemplated distributions to Eligible Mutual Funds, the IDC has concluded it is neither practicable nor feasible to effect distributions to Contemporaneous Accountholders. In these instances, the Eligible Mutual Fund will receive its share of Fund monies, and these monies will be deposited directly into the mutual fund's asset base.

41. In order to implement this method of distribution, the fund family will be notified that the allocated monies are designated solely for the fund, are to be deposited into the fund's asset base, and prior to deposit in the fund's asset base are not to be used directly for administrative or management fees. In addition, the fund family will be required to certify that the money will be deposited into the mutual fund as intended. If the Fund Administrator does not receive a certification from the fund family that the Fund monies will be deposited into their Eligible Mutual Funds' asset bases within the deadline specified by the Fund Administrator, then these mutual funds will no longer be considered Eligible Mutual Funds, and these Fund monies will be allocated to the remaining Eligible Mutual Funds per the methodology in paragraph 18. The Fund Administrator will keep records of each contact attempt for a fund family and each response received, if any. These records will be provided to the Commission staff at least 30 days before the scheduled distribution is to be made. To reduce the administrative costs of distribution, the minimum distribution from the Fund has been set

at \$1,000 for each Eligible Mutual Fund. Monies allocated to funds that fall below the minimum threshold of \$1,000 will be added back to the Distributable Amount. These mutual funds are not considered Eligible Mutual Funds, and these monies will be allocated to the Eligible Mutual Funds per the methodology outlined in Paragraph 18.

42. *Redesignation.* If a fund family cannot be determined for a particular Eligible Mutual Fund, then the fund ownership will be examined to determine eligibility for distribution. If the mutual fund, for example, has merged with another mutual fund or has been purchased by another entity, the entity that controls the mutual fund will become the designated party. The controlling entity will be treated as if it had owned or controlled the mutual fund at the time of the market timing activity. If a mutual fund no longer exists, then neither the mutual fund nor the investors in such fund will be eligible for compensation. Monies allocated to such funds will be added back to the Distributable Amount. These mutual funds will no longer be considered Eligible Mutual Funds, and these monies will be allocated to the remaining Eligible Mutual Funds per the methodology outlined in Paragraph 18.

43. The IDC or Fund Administrator shall cooperate with the Tax Administrator to provide necessary Forms W-9 or W-8BEN or any other necessary forms to determine withholding status, if any, and to accomplish any withholding required.

44. Once the Tax Administrator has completed verification of tax withholding amounts and any additional requests for funds, the validated list of payees will be submitted to the Commission staff, who will seek Commission approval for the disbursement. After the issuance of the order directing disbursement, payments to Eligible Mutual Funds under this distribution method will be completed within 30 days from the order directing disbursement.

Distribution to Contemporaneous Accountholders

45. In certain instances, as discussed above, distributions to Contemporaneous Accountholders may be practicable and feasible. This may be accomplished through either (a) cooperation with a mutual fund family's assigned IDC, or (b) via direct

distribution from the PSI Distribution Fund to Contemporaneous Accountholders in a mutual fund.

Distribution to Contemporaneous Accountholders Through an Existing Fund Family IDC

46. Where a fund family has an assigned IDC related to market timing conduct, and in the interest of minimizing the administrative costs associated with accountholder distributions and the confusion associated with multiple distributions from different fair funds, where appropriate and feasible, the IDC will consult with the Fund Family IDC to determine whether distribution of PSI Distribution Fund monies to individual accountholders in the Eligible Mutual Funds within the fund family is practicable and feasible.

47. An examination will then be made to determine the extent of overlap between the mutual funds, the relevant time periods, and dilution estimates among the mutual funds covered by the Fund Family IDC and the PSI Distribution Fund. If there is sufficient concurrence or overlap, and the Fund Family IDC is determined to be able to accept and distribute applicable Fund monies at a reasonable cost and within a reasonable time frame, then all of the Fund monies attributable to the same fund family will be transferred to the Fund Family IDC for distribution to Contemporaneous Accountholders within the fund family.

48. In cases where a sufficient concurrence or overlap exists for a smaller subset of mutual funds, and the Fund Family IDC is able to direct monies to Contemporaneous Accountholders within these specific mutual funds under this IDC's direction, then monies for these mutual funds will be transferred to the Fund Family IDC for distribution to Contemporaneous Accountholders.

49. A validated list of payments to existing Fund Family IDCs will be submitted to the Commission, where possible, within 30 days of the Approval Date, but no later than 60 days from the Approval Date. Payments will be made to Fund Family IDCs within one week of receipt of Fund monies into the Escrow Bank.

Distribution to Contemporaneous Accountholders from the PSI Distribution Fund using an Existing Fund Family IDC's Allocation Methodology

50. If there exists sufficient concurrence or overlap, but the Fund Family IDC is unable to distribute Fund monies to Contemporaneous Accountholders, the Fund Family IDC will be asked to provide a list of the fund family's fair fund/disgorgement fund beneficiaries and associated payment amounts. If possible at a reasonable cost and within a reasonable time frame, the PSI Distribution Fund payment to this fund family will then be allocated by the IDC to the list of beneficiaries in the same proportion as the Fund Family IDC's allocation of funds. This allocation will be implemented by the IDC for all funds covered by the Fund Family IDC or a smaller set of funds depending on which mutual funds are covered by the Fund Family IDC's plan and those covered by the Fund.

51. In the event the IDC undertakes a Contemporaneous Accountholder distribution in a Fund Family using the Fund Family IDC's allocation methodology, as described above, it is proposed that the IDC and the Respondents engage the fund administrator previously approved for that fund family to perform the administrative services set forth in Paragraphs 69 and 70 of the Plan and any ancillary, related services to distribute Fund monies to Contemporaneous Accountholders in qualifying funds²⁰ within that fund family. The previously approved fund administrator for the fund family is hereby appointed and shall be entitled to all of the protections, rights and obligations of a "Fund Administrator" as set forth in the SEC's Rules on Fair Fund and Disgorgement Plans. A validated list of payees (Contemporaneous Accountholders) under this process, where possible, will be submitted to the Commission within 90 days of the Approval Date, but no later than eight months after the Approval Date. Distributions to Contemporaneous Accountholders will be completed within 30 days of the Commission staff obtaining an order directing disbursement.

²⁰ In certain instances, mutual funds within a fund family may be slated to receive payments too small to warrant distributions to individual accountholders.

Distribution to Contemporaneous Accountholders from the PSI Fund using the Plan's Allocation Methodology

52. If the option to distribute Fund monies through a Fund Family IDC is not available, then the IDC will determine whether the monies to be allocated to a fund family are sufficient to justify distributions to Contemporaneous Accountholders within the mutual fund family. If, after an evaluation of the factors listed in Paragraph 38, it is determined that a distribution to Contemporaneous Accountholders is feasible and practicable, then the following series of steps is contemplated using the Fund Administrator to distribute Fund monies to Contemporaneous Accountholders for qualifying mutual funds within the fund family:

1. The Fund Administrator will contact the fund family to collect relevant share ownership information for individual accounts during the Relevant Period within each qualifying mutual fund slated to receive payment from the Fund.²¹
2. Once the relevant data have been collected, the Fund Administrator will load and verify the integrity of these data on their systems. Share ownership data will then be provided to the IDC's staff, and the IDC's staff will calculate the payment amounts for each of these investor accounts. The Fund Administrator will then confirm the IDC's calculations by programming and implementing an allocation algorithm specified by the IDC.
3. After payment amounts have been verified, the Fund Administrator will compile updated address information for each investor account and contract with a vendor to print and mail individual checks. Any returned checks will be traced for updated contact information, reissued and remailed.
4. In addition to the above efforts, the Fund Administrator will establish a toll-free call center and web site to answer investor questions and for miscellaneous administrative requests.

²¹ Please see section titled "Gathering Information for Distribution to Contemporaneous Accountholders," Paragraphs 55-59, for further details on the data collection efforts required for distribution to individual accounts.

*De Minimis Threshold for Distributions to Contemporaneous Accountholders
from the PSI Distribution Fund*

53. A *de minimis* distribution amount for a Contemporaneous Accountholder will be set at \$10. In order to implement this *de minimis* distribution amount, the IDC will apply a gross-up formula. The gross-up formula requires that the distributions to Contemporaneous Accountholders be ranked in descending order of the size of the contemplated distribution. The IDC will then calculate the total amount of distributions below \$10 (the “*De minimis* Amount”). Beginning with the largest distribution less than \$10 and proceeding through the list, the IDC will assign a distribution of \$10 to each Contemporaneous Accountholder until the *De minimis* Amount is depleted and then all remaining Contemporaneous Accountholder accounts below \$10 will be set to \$0.

54. If for any reason, distribution of Fund monies cannot be made to Contemporaneous Accountholders using a Fund Family IDC, or a validated list of payees²² has not been submitted to Commission staff within a time period of eight months after the Approval Date, the allocated amounts will be deposited to the asset base of the Eligible Mutual Fund to which the allocation relates within nine months of the Approval Date. All distributions will be on terms providing that checks not cashed within ninety days after distribution shall be void, and the issuing financial institution shall be instructed to void those checks.

Gathering Information for Distribution to Contemporaneous Accountholders

55. A data set that contains all relevant Contemporaneous Accountholder data will be compiled for each Eligible Mutual Fund slated for distribution to Contemporaneous Accountholders by the Fund Administrator. The accountholders’ database will include account data for direct purchase accounts, transparent omnibus accounts, opaque omnibus accounts, and retirement accounts. The database will also incorporate information relating to known closed accounts, and will contain information

²² A validated list of individual account payees will be submitted to the Commission staff when a distribution to Contemporaneous Accountholders is undertaken with the assistance of the Fund Administrator.

sufficient to allow for computation of distributions for all eligible accounts. With the assistance of the relevant fund family or transfer agent, the database will be reviewed for accuracy.

56. It is necessary to identify each type of investor that may have held a relevant mutual fund account. Mutual fund investors purchase and sell shares through several distribution channels. For purposes of this Plan, accountholders are identified by the type of distribution channel used to buy and sell funds. Each accountholder is treated separately in the Distribution Plan, as follows:

a. Direct Purchase Accountholders. Some mutual fund investors purchase their shares directly from the fund via telephone or computer, and submit their order information to the fund's primary third party transfer agent or an affiliated fund servicing company. The transfer agent acts as the master record keeper for the fund, keeping track of shares sold and redeemed, along with a record of the cash flowing into and out of the fund. For direct purchase accounts, the identity of the accountholder may be known to the fund family.

b. Transparent Omnibus Accountholders. Other mutual fund investors purchase their shares through intermediaries such as broker-dealers, banks, and retirement plans. These financial intermediaries form a network to process and record mutual fund transactions. Under an omnibus account arrangement, the financial intermediary is the shareholder of record and holds securities on behalf of the customer. The financial intermediary provides the transfer agent with daily customer transaction data on the number of shares purchased and sold by all customers on an aggregate basis. The omnibus account is transparent if there is access to records that identify the actual beneficial owners.

c. Opaque Omnibus Accountholders. An opaque omnibus account is identical to that of a transparent omnibus arrangement, except that the fund family does not have access to the records that identify the actual owners of the account. The financial intermediary does not provide any specific customer information, such as a Tax Identification Number, to the transfer agent in connection with an opaque account.

d. Retirement Accountholders. A large portion of mutual fund investors purchase their shares through tax-advantaged retirement plans, such as 401(k)

accounts. About one-third of all mutual fund shares are held through retirement accounts.²³

Distribution to Omnibus Accounts

57. Under the IDC's direction, all omnibus accounts will be categorized according to whether they are opaque or transparent.²⁴ The Fund Administrator will identify all known opaque omnibus accounts with contemplated distributions of \$1,000 or more. The Fund Administrator will then approach all known opaque omnibus intermediaries with contemplated distributions of \$1,000 or more. The Fund Administrator and the IDC will exercise commercially reasonable efforts to obtain from those intermediaries all data necessary to allow the intermediary accounts to be treated as though they are transparent accounts held at the fund family, or allow the omnibus accountholder to distribute Fund monies per the options detailed under Paragraph 60, sections b and c.

If an opaque omnibus accountholder elects to have the Fund Administrator distribute Fund monies as outlined under Paragraph 60, section a, the Fund Administrator will request the name, address, Tax Identification Number and account information for all underlying shareholders of the omnibus account. Omnibus accountholders might consider this information commercially sensitive. The Fund Administrator shall maintain in confidence Shareholder Identifying Information and any other information relating to sub-accountholders obtained from any omnibus accountholder pursuant to this Distribution Plan, and shall not share such information with Respondent. The Fund Administrator, however, may share such information with its service providers or other parties to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other parties maintain such information in confidence.

²³ See Investment Company Institute, *Mutual Funds and the U.S. Retirement Market in 2002*, Fundamentals, at 1, 2 (June 2003).

²⁴ As transparent omnibus accountholders provide information regarding the underlying shareholders of the omnibus account, the underlying shareholders will be treated as if they were Direct Purchase Accountholders, and additional outreach efforts to the omnibus accountholder may not be required.

58. The Respondent will reimburse opaque omnibus accountholders for actual and commercially reasonable expenses incurred in gathering and providing the necessary data, subject to the limitation that the amount of reimbursement will not exceed the contemplated distribution. The Fund Administrator will maintain records of efforts made to obtain the cooperation of opaque omnibus accountholders and of the responses to these efforts.

59. No later than 150 days after Commission approval of the Plan, and after the expenditure of reasonable efforts to obtain these data from opaque omnibus account holders, where all determinations as to reasonableness will be made by the IDC, the data obtained from the omnibus accountholders will be added to the database. Under the IDC's direction, the database will be reviewed for accuracy.

Distribution Options for Opaque Omnibus Accountholders

60. All omnibus accountholders who respond to the Fund Administrator will receive a further communication that describes steps the recipient should take in light of its status as an omnibus or collective accountholder. For omnibus accounts held at registered broker-dealers that receive distributions of \$1,000 or more, these options are:

- a. Provision of all necessary data to the Fund Administrator so that the Fund Administrator can apply an allocation methodology to the amount that has already been set to be distributed to that account. Any omnibus accountholder who elects this option must notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives and must provide the necessary data within 60 days. Under this option, the Fund Administrator would perform the required calculations and distribute the payments to the beneficial shareholders of the omnibus account within 90 days of receipt of these data.
- b. Provision of all necessary data to the Fund Administrator so that the Fund Administrator can apply an allocation methodology to the amount that has already been set to be distributed to that account. Any omnibus accountholder who elects this option must notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives and must provide the necessary data within 60 days. Under this option, the Fund Administrator would perform the required calculations, but the omnibus accountholder would remain responsible for the actual distribution. The Fund Administrator will provide the omnibus accountholder with a beneficiary payment list within 60 days of obtaining

the necessary data. Omnibus accountholders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficiaries in accordance with this Plan within 30 days from receipt of the beneficiary payment list, or they will not receive any proceeds.

- c. The omnibus accountholder will apply an allocation methodology specified by the IDC to the amount that has already been set to be distributed to that account. Any omnibus accountholder who elects this option must notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives. Under this option, the omnibus accountholder would perform the required calculations and would be responsible for the actual distribution. The Fund Administrator will provide the allocation methodology within 30 days of notification by the omnibus accountholder. Omnibus accountholders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficial shareholders in accordance with this Plan within 90 days from receipt of the allocation methodology, or they will not receive any Fund proceeds.

In addition, omnibus accountholders that elect to distribute Fund monies as detailed under options b or c above, must certify that any checks will state on their face, "Void After 90 Days", and any proceeds from these checks or any undistributed Fund monies will be returned by the omnibus accountholder by wire or check to the Fund Administrator for deposit into the Distribution Fund escrow account.

61. All other opaque omnibus accountholders receiving distributions less than \$1,000 will receive a distribution payment. The options for distribution are:

- a. Application of any distribution technique that the recipient, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary or other legal obligations.
- b. Distribution of the proceeds to beneficiaries in the ratios that would be determined by an allocation methodology specified by the IDC within 90 days of receipt of the allocation methodology. Accountholders who elect this alternative will be provided with information sufficient to perform the necessary calculations.
- c. Return the check or the credit to the Fund Administrator or simply elect not to cash the check.

62. If the Fund Administrator is unable to obtain within a reasonable time information identifying shareholders from an opaque or transparent omnibus

accountholder, the amount of Fund monies allocated to such omnibus accountholder shall be deposited to the asset base of the Eligible Mutual Fund to which the distribution relates subject to the restrictions set forth in paragraph 41. The Fund Administrator will maintain records of each attempt to contact an omnibus accountholder, and each response received, if any. These records will be provided to Commission staff at least 30 days before the scheduled distribution is to be made.

Distributions to Retirement Plans/Accounts

63. “Retirement Plan” as used in this Plan means an employee benefit plan, as such plans are defined in section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account (IRA), whether or not the plan is subject to Title I of ERISA. Under this Plan, IRA retirement plans are treated as “transparent omnibus accounts,” and distributions to IRAs will be made in accordance with Paragraphs 57 through 61 of this Plan.

64. Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Plan requires the plan fiduciaries and intermediaries, as defined in Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006 (the “Field Assistance Bulletin”), of Retirement Plans to distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including, but not limited to, the Field Assistance Bulletin within 90 days of receipt of the allocation from the Fund

65. An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Plan among eligible Retirement Plans participating in an omnibus account administered by such intermediary according to a method specified by the IDC or on behalf of the IDC or according to the average share or dollar balances of the Retirement Plans’ investment in Eligible Mutual Funds during the Relevant Period, provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.

The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:

- a. Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology specified by the IDC. The IDC will make this methodology available to Retirement Plan fiduciaries.
- b. Retirement Plan fiduciaries may allocate the distribution *pro rata* (based on total account balance) among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- c. Retirement Plan fiduciaries may allocate the distribution *per capita* among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- d. To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.

In view of, among other things, alternative distribution methodologies available to eligible plan fiduciaries and intermediaries, such intermediaries will not be reimbursed for the costs and expenses associated with the administration of the Distribution Plan.

D. Validation, Approval and Process of Disbursement of Fund Monies

66. Payments from the Fund will occur in tranches, and for each tranche, in order to distribute funds, the IDC will submit a validated list of payees and the payment amounts to the assigned Commission staff, who will obtain authorization from the Commission to disburse Fund monies pursuant to Rule 1101(b)(6). For example, it is anticipated that the first tranche of payments will be comprised of allocations to Eligible Mutual Funds for deposit to the funds' asset bases or payments to other Fund Family IDCs for distribution to individual accountholders. Additional tranches will be payments to Contemporaneous Accountholders within Eligible Mutual Funds. These payment lists will be submitted to the Commission staff on a rolling basis and after the Approval Date, but without a date certain to avoid opportunities for arbitrage. The payees and amounts in each list will be validated under the IDC's direction. The

validation will state that each payment list was compiled in accordance with the Plan and provides all information necessary to make disbursement to each distributee. Unless otherwise directed by the Commission, the Commission staff will obtain an order directing disbursement that releases funds to the bank account established by the Fund Administrator based upon each validated list and distributions will occur according to timing determined by the Fund Administrator. The Fund Administrator will report to Commission staff, within 30 days of each distribution mailing date, that the distribution has been accomplished.

Check Cutting Process

67. All checks shall bear a stale date 90 days from the date of issue. All distributions will be on terms providing that checks not cashed within 90 days after distribution shall be void, and the Escrow Bank shall be instructed to stop payment on those checks or otherwise assure that payment on such checks is prevented. The proceeds of stale and voided checks shall be deposited to the asset base of the Eligible Mutual Fund to which the distribution relates.

Information Mailing to Accompany Payments

68. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a link to a web site that will provide a description of the tax information reporting and other related tax matters; (c) a statement that checks will be void after 90 days; and (d) the name of a person to contact in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Fund established by the SEC.

Support Services for Investors

69. The Fund Administrator will provide customer support and communications programs which will become active at least by the time the first distribution occurs to Contemporaneous Accountholders from the Fund. These services will include a toll-free

call center for investors of funds who received individual account distributions, and a website to the public. The Commission staff retains the right to review and approve any material posted on the website.

Procedure for Handling Returned Checks or Electronic Transfers

70. Returned mail and checks will be handled as follows.

1. All mail returned by the United States Postal Service (“USPS”) for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to the new address. The database will be updated with the new address. All mail returned by the USPS for the first time, without a new forwarding address, will be coded as returned mail, the check will be voided, and current address information forwarded to a nationally recognized address search service for address research. If a new address is found, that address will be updated to the master database and a new check will be issued. This new check may be issued with a stale date of 30 or 60 days after issuance. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered, subject to a presumption that the additional costs of distribution will not exceed the amount to be distributed.
2. All mail forwarded by the USPS from a second attempt mailing, for which a new forwarding address has been provided by the USPS, will be immediately repackaged and sent to that new address. The master database will be updated with the new address.
3. All mail returned by the USPS from a second attempt mailing, without a new forwarding address, will be coded as returned mail and the check will be voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered, subject to a presumption that the additional costs of distribution will not exceed the amount to be distributed.

Under the IDC’s direction, this procedure for handling returned checks or electronic transfers will be validated.

No Claims-Made Process

71. This Fund is not being distributed according to a claims-made process, and therefore the procedures for making and approving claims are not applicable.

Provision for Management and Distribution of Fund Monies

72. Upon approval of the Plan, the Fund Administrator shall establish an account at the Escrow Bank, in the name of and bearing the Taxpayer Identification Number of the QSF (the "QSF Account"). The Fund Administrator shall be the signer on the QSF account, subject to the continuing jurisdiction and control of the Commission.

In order to distribute funds, the IDC will submit a validated list of payees and the payment amounts to the assigned Commission staff, who will seek authorization from the Commission to disburse pursuant to SEC Rule 1101(b)(6). The payees and amounts will be validated under the IDC's direction. The validation will state that the list was compiled in accordance with the Plan and provides all information necessary to make a disbursement to each distributee. Unless otherwise directed by the Commission, the Commission staff will seek an Order Directing Disbursement that releases funds to the QSF Account based upon the validated list and representation by the Fund Administrator that the checks or electronic transfers will be issued within the next 5 business days.

The Fund Administrator shall authorize the Escrow Bank to provide account information to the Tax Administrator. The Fund Administrator shall use the assets and earnings of the Fund to provide payments to Fund beneficiaries.

73. The Escrow Bank will hold Fund assets during the check-cashing period and require use of a positive payment system. Once the Fund assets are transferred from the Bureau of Public Debt to the Escrow Bank, they shall be placed in an escrow account which shall invest and reinvest the escrow property in short-term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided however, that investments in short-term U.S. Treasury securities will not be made through repurchase agreements or other derivative products. This shall be done pursuant to the terms of an escrow agreement that must be acceptable to the staff of the

Commission. When checks are presented for payment by recipients of the distribution, and validated by the Fund Administrator, the exact amount necessary to pay such presented checks shall be transferred from the escrow account into a distribution account bearing the name and taxpayer identification number of the Fund, and validated presented checks shall be paid from this distribution account. For any payment to be made by wire instruction, the appropriate funds will be distributed by the Escrow Bank directly to the payee in accordance with written instructions provided to the Escrow Bank by the Fund Administrator. The Escrow Bank maintains a Financial Institutions (FI) Bond, including errors and omissions coverage with a per occurrence and aggregate limit of 210,000,000 Euro and a bankers blanket bond of 125,000,000 Euro. The primary insurer is Chubb, a company which, as of its most recent renewal, was rated (“A+ XV”) by A.M. Best. The Escrow Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. The Escrow Bank limits are reviewed annually by the company’s Board of Directors.

Termination and Provision for Disposition of Undistributed Funds

74. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall seek an order from the Commission to approve the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and shall arrange for the termination of the Fair Fund and discharge of the Fund Administrator.

E. Amendment and Notices

Plan Amendments

75. The IDC and Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Plan. The IDC will inform the

Commission staff of any changes needed in the Plan. Upon agreement with Commission staff, the IDC may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party or the Fund Administrator or upon the Commission's own motion.

Notice of Proposed Plan and Opportunity for Comment

76. Notice of this Plan shall be published in the *SEC Docket*, on the Commission website [<http://www.sec.gov>], on the website www.psidistributionfund.com, and in such other publications as the Commission may require. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12400) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

77. This Distribution Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.