UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15471

In the Matter of

SARKAUSKAS AND ASSOCIATES, INC. and JAMES M. SARKAUSKAS

Respondents.

PROPOSED PLAN OF DISTRIBUTION

1. *Purpose and Background*. This proposed Plan of Distribution (the "Plan") has been developed pursuant to Rule 1101 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Rules"), 17 C.F.R. § 201.1101. The Plan proposes a distribution of the funds collected from Sarkauskas and Associates, Inc. ("the Adviser") and James M. Sarkauskas ("Sarkauskas") (collectively, "Respondents") to investors who were charged unnecessary transaction fees from their respective accounts.

On September 13, 2013, the Commission issued a settled cease and desist and administrative proceeding order[1] ("Order") related to a fraudulent scheme perpetrated by Respondents. Respondents purchased for their clients unit investment trust ("UIT") units that included transactional sales charges ("loads") without disclosing that identical no-load UIT units could be purchased. The Order stated that Respondents' failure to disclose this information resulted in their substantially increasing their compensation at the expense of their clients, which created a conflict of interest. As a result of this conduct, the Commission's order found that Respondents willfully violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act").

The Order required Respondents to cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act. The Order barred Sarkauskas from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, prohibited him 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

[1] Exchange Act Rel. No. 70388 (Sep. 13, 2013).

underwriter, and barred him from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. Respondents also were ordered to pay disgorgement of $331,433.98 and prejudgment interest of $18,403.22, and Sarkauskas was ordered to pay a civil money penalty of $100,000.

In accordance with the Order, Respondents paid a total of $449,837.20 in disgorgement, prejudgment interest, and civil monetary penalties to the Commission.

The Order created a Fair Fund pursuant Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds paid by the Respondents (the "Fair Fund"). The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit in a Commission designated interest-bearing account at the United States Department of the Treasury ("U.S. Treasury"). The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

Under the Plan, the Fair Fund, less any reserve for taxes, fees or other expenses of administering the Plan (the "Net Fair Fund"), will be distributed to eligible investors as defined in paragraph 6 below. It is anticipated that there will be one disbursement to the eligible investors.

2. *Fund Administrator*. On May 21, 2015 the Commission appointed Rust Consulting, Inc. as Fund Administrator and set its bond at $449,837.20 as required by Rules 1105(a) and 1105(c) of the Commission's Rules. [2] The Fund Administrator will, among other things: oversee the administration of the Fair Fund, confirm mailing information for the eligible investors as defined in paragraph 6 below, distribute money from the assets of the Fair Fund in accordance with the Plan, resolve disputes, prepare a final accounting with assistance from the tax administrator, and provide the tax administrator with funds to pay tax liabilities and tax compliance fees and costs, pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds. [3]

3. *Qualified Settlement Fund*. The Fair 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.

4. *Tax Administrator*. The Commission has appointed Damasco and Associates, LLP as the Tax Administrator ("Tax Administrator") of the Fair Fund. [4] The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish income tax compliance of the QSF. The Tax Administrator will be compensated for all reasonable costs and expenses from the Fair Fund in accordance with its

[2] Exchange Act Rel. No. 75034 (May 21, 2015).
[3] Exchange Act Rel. No. 68683 (Jan. 17, 2013).
[4] Exchange Act Rel. No. 73323 (Oct. 8, 2014).

2013-2015 Engagement Letter Agreement with the Commission. The Fair Fund's taxes will be paid out of the Fair Fund.

5. *Escrow Bank*. The Fund Administrator shall establish with the Escrow Bank ("Bank") an escrow account pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, in the name of and bearing the Employer Identification Number ("EIN") of the QSF (the "Escrow Account"). The Fund Administrator shall also establish with the Bank a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding distribution payments to be distributed to eligible investors by the Fund Administrator pursuant to the Plan. The name of each account shall be in the following form: Sarkauskas Fair Fund.

During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to eligible investors, tax obligations, and/or fees of the Tax Administrator and/or Fund Administrator, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government. The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

All Fair Fund checks presented for payment or electronic transfer will be subject to "positive pay" controls before being honored by the Bank, and all such checks issued to eligible investors by the Fund Administrator shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this ninety (90) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks, and the funds will remain assets of the Fair Fund. If a check reissue has been requested before the stale date, such request will be honored and the reissued check will bear a stale date of thirty (30) days. Check reissue requests will not be honored after 90 days from the original check issuance date without consultation with and direction given to reissue by Commission staff. For any electronic payment, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instruction provided to the Escrow Bank by the Fund Administrator.

6. *Specification of Eligible Investors*. Eligible investors are persons who invested with the Advisor and who suffered a loss due to the Advisor and Sarkauskas making purchases with unnecessary transactional sales charges ("Eligible Investors").

7. *No claims-made process.* The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

8. *Methodology for Determining Distribution Amounts*. The Commission staff determined the amount to be distributed to each Eligible Investor as follows:

a. The staff totaled the dollar amount each Eligible Investor was overcharged for every transaction that Respondents made on their behalf. Each trade should have cost $18. The staff considered any additional commissions/fees paid to either Sarkauskas or Western International ("Western"), a third party broker-dealer, an overcharge. The total of the overcharges for each Eligible Investor is the dollar value of the harm ("Harm") each Eligible Investor incurred.

b. Because sufficient funds may be available to compensate Eligible Investors for the time value of money on their Harm, the staff calculated the amount of lost interest earnings ("Lost Interest Earnings") on the Harm for each Eligible Investor by doing the following:

1. Calculating the Harm on each transaction as described in 8.a. above;

2. Calculating the present value of Harm on each transaction by applying the interest rate on short term U.S. treasury securities and compounding monthly;

3. Summing the present value of Harm across all transactions for each Eligible Investor to arrive at total present value harm ("Harm PV") for that Eligible Investor;

4. The difference between each Eligible Investor's Harm PV and Harm is the Lost Interest Earnings.

c. Because the Fair Fund ($449,837.20), prior to subtracting any fees, taxes, or other expenses of administering the Plan, currently exceeds the sum of all Eligible Investors' Harm PV ("Total Harm PV") of $367,417, the estimated net distribution for each Eligible Investor ("Estimated Net Distribution") is anticipated to be equal to each Eligible Investor's Harm PV. Any funds remaining in the Fair Fund following disbursements to Eligible Investors will be transferred to the U.S. Treasury.

d. If, however, should the Fair Fund minus any fees, taxes, or other expenses of administering the Plan be less than the Total Harm PV[5], the Estimated Net Distribution Amount will be calculated as follows:

1. Dividing each Eligible Investor's Harm PV by the Total Harm PV to obtain a *pro rata* share ("*Pro Rata* Share");

[5] The staff provides this alternative method of calculating the Eligible Investor's Estimated Net Distribution if, for any reason, the total of fees, taxes, and other expenses of administering the Plan <u>exceeds</u> $82,420.20, which would reduce the current Fair Fund below the Total Harm PV of $367,417. Thus, a *pro rata* calculation would be required.

2. Multiply each Eligible Investor's *Pro Rata* Share by the Fair Fund minus any fees, taxes, or other expenses of administering the Plan.

In the view of the staff and Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund to compensate an Eligible Investor's harm. Based on this methodology, it is anticipated that there will be one distribution to Eligible Investors, which will take place as outlined in paragraph 10 below.

The Eligible Investor's Harm PV, *Pro Rata* Share, and estimated net distribution for each Eligible Investor are as follows:

Eligible Investor	Harm PV	*Pro Rata* Share	Estimated Net Distribution[6]
Eligible Investor #1	$5,133	1.397%	$5,133
Eligible Investor #2	$705	0.192%	$705
Eligible Investor #3	$598	0.163%	$598
Eligible Investor #4	$5,928	1.613%	$5,928
Eligible Investor #5	$4,095	1.115%	$4,095
Eligible Investor #6	$4,328	1.178%	$4,328
Eligible Investor #7	$300	0.082%	$300
Eligible Investor #8	$91	0.025%	$91
Eligible Investor #9	$3,484	0.948%	$3,484
Eligible Investor #10	$577	0.157%	$577
Eligible Investor #11	$2,687	0.731%	$2,687
Eligible Investor #12	$2,656	0.723%	$2,656
Eligible Investor #13	$11,327	3.083%	$11,327
Eligible Investor #14	$3,009	0.819%	$3,009
Eligible Investor #15	$1,159	0.315%	$1,159
Eligible Investor #16	$7,540	2.052%	$7,540
Eligible Investor #17	$3,308	0.900%	$3,308
Eligible Investor #18	$871	0.237%	$871
Eligible Investor #19	$3,021	0.822%	$3,021
Eligible Investor #20	$2,582	0.703%	$2,582
Eligible Investor #21	$11,444	3.115%	$11,444
Eligible Investor #22	$10,589	2.882%	$10,589

[6] The Estimated Net Distribution amount for each Eligible Investor is limited to and capped at that Eligible Investor's Harm PV. An Eligible Investor may receive an amount less the Estimated New Distribution only if a *pro rata* distribution is required.

Eligible Investor #23	$1,469	0.400%	$1,469
Eligible Investor #24	$1,495	0.407%	$1,495
Eligible Investor #25	$3,492	0.950%	$3,492
Eligible Investor #26	$18,635	5.072%	$18,635
Eligible Investor #27	$2,573	0.700%	$2,573
Eligible Investor #28	$622	0.169%	$622
Eligible Investor #29	$3,987	1.085%	$3,987
Eligible Investor #30	$22,699	6.178%	$22,699
Eligible Investor #31	$459	0.125%	$459
Eligible Investor #32	$1,327	0.361%	$1,327
Eligible Investor #33	$368	0.100%	$368
Eligible Investor #34	$536	0.146%	$536
Eligible Investor #35	$145	0.039%	$145
Eligible Investor #36	$109	0.030%	$109
Eligible Investor #37	$3,159	0.860%	$3,159
Eligible Investor #38	$1,198	0.326%	$1,198
Eligible Investor #39	$2,022	0.550%	$2,022
Eligible Investor #40	$6,449	1.755%	$6,449
Eligible Investor #41	$4,972	1.353%	$4,972
Eligible Investor #42	$1,019	0.277%	$1,019
Eligible Investor #43	$2,223	0.605%	$2,223
Eligible Investor #44	$292	0.080%	$292
Eligible Investor #45	$668	0.182%	$668
Eligible Investor #46	$1,213	0.330%	$1,213
Eligible Investor #47	$1,375	0.374%	$1,375
Eligible Investor #48	$3,819	1.039%	$3,819
Eligible Investor #49	$4,024	1.095%	$4,024
Eligible Investor #50	$827	0.225%	$827
Eligible Investor #51	$1,448	0.394%	$1,448
Eligible Investor #52	$1,862	0.507%	$1,862
Eligible Investor #53	$1,448	0.394%	$1,448
Eligible Investor #54	$2,934	0.798%	$2,934
Eligible Investor #55	$308	0.084%	$308
Eligible Investor #56	$489	0.133%	$489
Eligible Investor #57	$661	0.180%	$661
Eligible Investor #58	$4,421	1.203%	$4,421
Eligible Investor #59	$2,382	0.648%	$2,382
Eligible Investor #60	$14,509	3.949%	$14,509

Eligible Investor #61	$6,063	1.650%	$6,063
Eligible Investor #62	$10,284	2.799%	$10,284
Eligible Investor #63	$368	0.100%	$368
Eligible Investor #64	$13,536	3.684%	$13,536
Eligible Investor #65	$525	0.143%	$525
Eligible Investor #66	$489	0.133%	$489
Eligible Investor #67	$2,001	0.545%	$2,001
Eligible Investor #68	$778	0.212%	$778
Eligible Investor #69	$5,835	1.588%	$5,835
Eligible Investor #70	$1,100	0.299%	$1,100
Eligible Investor #71	$209	0.057%	$209
Eligible Investor #72	$782	0.213%	$782
Eligible Investor #73	$277	0.075%	$277
Eligible Investor #74	$1,405	0.382%	$1,405
Eligible Investor #75	$21,185	5.766%	$21,185
Eligible Investor #76	$416	0.113%	$416
Eligible Investor #77	$377	0.103%	$377
Eligible Investor #78	$11,341	3.087%	$11,341
Eligible Investor #79	$3,335	0.908%	$3,335
Eligible Investor #80	$1,192	0.324%	$1,192
Eligible Investor #81	$2,716	0.739%	$2,716
Eligible Investor #82	$555	0.151%	$555
Eligible Investor #83	$3,453	0.940%	$3,453
Eligible Investor #84	$5,307	1.444%	$5,307
Eligible Investor #85	$6,066	1.651%	$6,066
Eligible Investor #86	$2,888	0.786%	$2,888
Eligible Investor #87	$323	0.088%	$323
Eligible Investor #88	$326	0.089%	$326
Eligible Investor #89	$6,452	1.756%	$6,452
Eligible Investor #90	$4,425	1.204%	$4,425
Eligible Investor #91	$2,859	0.778%	$2,859
Eligible Investor #92	$1,713	0.466%	$1,713
Eligible Investor #93	$644	0.175%	$644
Eligible Investor #94	$2,531	0.689%	$2,531
Eligible Investor #95	$3,211	0.874%	$3,211
Eligible Investor #96	$754	0.205%	$754
Eligible Investor #97	$11,809	3.214%	$11,809
Eligible Investor #98	$234	0.064%	$234

Eligible Investor #99	$199	0.054%	$199
Eligible Investor #100	$632	0.172%	$632
Eligible Investor #101	$3,436	0.935%	$3,436
Eligible Investor #102	$5,879	1.600%	$5,879
Eligible Investor #103	$272	0.074%	$272
Eligible Investor #104	$344	0.094%	$344
Eligible Investor #105	$3,333	0.907%	$3,333
Eligible Investor #106	$1,231	0.335%	$1,231
Eligible Investor #107	$2,082	0.567%	$2,082
Eligible Investor #108	$1,953	0.531%	$1,953
Eligible Investor #109	$1,067	0.290%	$1,067
Eligible Investor #110	$1,067	0.290%	$1,067
Eligible Investor #111	$1,089	0.296%	$1,089
Total Harm PV	$367,417	100%	$367,417

9. *Procedures for Locating and Notifying Eligible Investors.* Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, Commission staff has identified one hundred and eleven (111) Eligible Investors. Within thirty (30) days of the Commission's approval of the Plan, the Fund Administrator will send each Eligible Investor a notice by electronic mail, United States Postal Service, or other mail delivery service regarding the Commission's approval of the Plan, including, as appropriate, a statement characterizing the distribution, a link to the Plan on the Commission's Information for Harmed Investors page and instructions for requesting a copy of the Plan, the number assigned that Eligible Investor on the chart in order to determine his or her Harm PV (as defined in paragraph 8) and Estimated Net Distribution amount (as defined in paragraph 8), a description of the tax information reporting and other related tax matters, and the name of the Fund Administrator to contact with questions regarding the distribution (the "Plan Notice"). Eligible Investors will be asked to respond and provide documentation only if they disagree with the Estimated Net Distribution amount, which is defined in paragraph 8 and will be printed on their notice, or need to make a change to the account name. The Fund Administrator will coordinate with the Tax Administrator to request contact and other information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

If a Plan Notice is returned as undeliverable within sixty (60) days of the Commission's approval of the Plan, the Fund Administrator will make all reasonable efforts to ascertain an Eligible Investor's correct address. The Fund Administrator will then resend the Plan Notice to the Eligible Investor's new address within thirty (30) days of receipt of the returned Plan Notice. If the Plan Notice is returned again, the Eligible Investor will be removed ("Removed Eligible Investor") from the distribution and that particular Removed Eligible Investor's Estimated Net Distribution amount (as defined in paragraph 8) will be added to the Net Fair Fund (as defined in paragraph 1).

In no event will an Eligible Investor receive a distribution payment that exceeds the amount of his or her Harm PV. The disposition of any funds remaining in the Net Fair Fund (as defined in paragraph 1) that cannot be distributed for any reason is described in paragraph 17 below and will be reported in the final accounting.

10. *Distribution Timing.* The Fund Administrator will use their best efforts to start the Commission disbursement process within one hundred and fifty (150) days of the Plan's approval.

11. *Validation and Approval of Disbursement of the Fair Fund.* The Fair Fund disbursement to Eligible Investors will be implemented by the Commission and payments will be disbursed by the Fund Administrator. The Fund Administrator will compile the payee information and prepare a payment file in a format approved by Commission staff for submission to the Commission. Checks will be mailed or distribution payments will be electronically transferred to each Eligible Investor by the Fund Administrator working with Commission staff. Pursuant to Rule 1101(b)(6), the Commission staff will obtain an order from the Commission to disburse the Fair Fund.

The Fund Administrator will monitor uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator also is responsible for accounting for all payments. Checks issued by the Fund Administrator will state on their face that they are valid for 90 days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing institution shall be instructed to stop payment on these checks.

12. *Expenses of Administration.* Fees and other expenses of administering the Plan will be paid from the Fair Fund.

13. *Reports.* The Fund Administrator will provide Commission staff with a progress report within twenty (20) days after the end of each quarter and a final report with a final accounting once the distribution is complete.

14. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute funds from the Net Fair Fund according to the Plan. If there are any changes to the Plan that are determined to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. Immaterial changes may be made by the Fund Administrator with approval by Commission staff. For good cause shown, the Fund Administrator may extend any of the procedural dates set forth in the Plan with approval of Commission staff.

15. *Procedures to Request Plan Notice*. A person that does not receive a Plan Notice and believes that he or she should have received a Plan Notice after becoming aware of the Plan (e.g., through other Eligible Investors or on www.sec.gov) must submit documentation to the

Fund Administrator to establish that the individual is in fact eligible to receive a Plan Notice within seventy-five (75) days after the Commission's approval of the Plan. The Fund Administrator will contact the individual within twenty-one (21) days of receiving the individual's documentation with a determination of his or her eligibility if the Fund Administrator determines, after consulting with the Commission staff, that the individual should have received a Plan Notice.

16. Disputes will be limited to calculations of disbursement amounts to Eligible Investors. Within thirty (30) days of the date that an Eligible Investor's disbursement is made, the Fund Administrator must receive a written communication detailing the dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation. Within thirty (30) days of receipt of the written dispute, the Fund Administrator will notify the Eligible Investor of its resolution of the dispute, which shall be final. This procedure will be set forth in the Plan Notice.

17. *Disposition of Undistributed Funds.* Amounts remaining after distribution of the Net Fair Fund to Eligible Investors has occurred may include but are not limited to: funds reserved for future taxes and related expenses; funds from checks that have not been cashed, that were not delivered or that were returned to the Commission; and tax refunds for overpayment or for waiver of IRS penalties. All funds remaining in the Net Fair Fund will be transferred to the U.S. Treasury after the final accounting (as described in paragraph 18 below) is approved by the Commission.

18. *Final Accounting, Discharge of the Fund Administrator, and Termination of the Fair Fund.* Following the distribution of the Net Fair Fund to Eligible Investors, the Fund Administrator will make arrangements for the final payment of taxes and Tax Administrator fees and will submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan, and a request for approval of any unpaid taxes, fees and/or expenses to the Commission. The final accounting will be in a format provided by Commission staff. Commission staff will submit the final accounting for approval. When the Commission has approved the final accounting, staff will seek an order from the Commission: (1) to transfer the remaining funds to the U.S. Treasury; (2) to discharge the Fund Administrator; and (3) to terminate the Fair Fund.

19. *Notice of Proposed Plan of Distribution and Opportunity for Comment.* The Notice of the Proposed Plan of Distribution and Opportunity for Comment ("Notice") will be published in the SEC Docket and on the Commission's website at http://www.sec.gov/litigation/fairfundlist.htm. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (http://www.sec.gov/litigation/admin.shtml); or (c) by sending an email to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File No. 3-15471" in the subject line. Comments

received will be publicly available. Persons should only submit comments that they wish to make publicly available.