

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16554

In the Matter of

GRAY FINANCIAL GROUP, INC.,
LAURENCE O. GRAY, and
ROBERT C. HUBBARD, IV,

Respondents.

PLAN OF DISTRIBUTION

I. Overview

1. *Purpose.* The Division of Enforcement (“Division”) has prepared this Plan of Distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for the distribution of the disgorgement, prejudgment interest, and civil money penalties paid by Gray Financial Group, Inc. (“Gray Financial”), Lawrence O. Gray (“Gray”), and Robert C. Hubbard, IV (“Hubbard”) (collectively, the “Respondents”) in the above-captioned administrative proceeding.

2. *Background.* On November 22, 2017, the Commission settled proceedings instituted on May 21, 2015¹ and issued an Order Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Order against the Respondents (the “Order”)² finding that Gray Financial and Gray willfully violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”); and Hubbard willfully aided and abetted, and caused Gray Financial and Gray’s violations of Section 206(2) of the Advisers Act.

In the Order, the Commission found that between July 2012 and August 2013 (the “Harm Period”), Gray Financial, its Founder, Gray, and co-CEO, Hubbard, recommended, offered, and sold investments in a Gray Financial proprietary fund of funds, GrayCo Alternative Partners II, LP (“GrayCo Alt. II”) to four Georgia public pension clients, despite the fact that they knew,

¹ Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Securities Act Rel. No. 9789 (May 21, 2015).

² Advisers Act Rel. No. 4812 (Nov. 22, 2017).

were reckless in not knowing, or should have known that these investments did not comply with certain restrictions on alternative investments imposed by Georgia law. In addition, in October 2012, when recommending GrayCo Alt. II to one of their clients, Gray Financial and Gray made specific material misrepresentations concerning the investment's compliance with the Georgia law and the number and identity of prior investors in GrayCo Alt. II.

As a result of the conduct described in the Order, the Commission ordered: Gray and Gray Financial to pay, jointly and severally, disgorgement of \$224,071 and prejudgment interest of \$27,227.72; Gray to pay a civil penalty of \$150,000; and Hubbard to pay a civil penalty of \$75,000. In the Order, the Commission established a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so that the civil penalty, along with the disgorgement and prejudgment interest, can be distributed to harmed investors (the "Fair Fund").

The Respondents have paid the full \$476,298.72 pursuant to the Order. The Fair Fund is currently deposited in an interest-bearing account at the United States Department of the Treasury's Bureau of Fiscal Service ("BFS"). All BFS fees and expenses will be paid from the Fair Fund. Other than potential interest income from the BFS investment, the Commission does not anticipate that the Fair Fund will receive additional funds. If any additional funds are received, those funds will be sent to the United States Treasury ("U.S. Treasury").

This Plan provides for the distribution of the Fair Fund, less the Reserve (defined below) ("Net Fair Fund"), to those Eligible Investors, as defined in paragraph 9 below.

3. *Jurisdiction and Control.* The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan has been approved by the Commission, and the Commission retains jurisdiction over its implementation.

II. Administration of the Plan

4. *Fund Administrator.* Noel Gittens is the fund administrator for the Fair Fund ("Fund Administrator"). As a Commission employee, the Fund Administrator shall receive no compensation for his services in administering the Fair Fund, other than his regular salary as a Commission employee. In accordance with Rule 1105(c) of the Commission's Rules,³ no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund; obtaining contact and mailing information for the Eligible Investors; distributing money from the assets of the Fair Fund to Eligible Investors in accordance with the Plan; resolve payment issues; preparing a final accounting; and provide the Tax Administrator with funds to pay tax liabilities and tax compliance fees and costs. The Fund Administrator may be removed at any time by order of the Commission or hearing officer.

5. *Tax Administrator.* Pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds beginning

³ 17 C.F.R. § 201.1105(c).

June 30, 2017 through the 2018 calendar year,⁴ the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund.⁵

The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance and any other work ordered to the Tax Administrator by the Commission. Further, the Fund Administrator will cooperate with the Tax Administrator for purposes of timely and accurately fulfilling the information reporting and withholding obligations of the Fair Fund in compliance with IRS regulations, including but not limited to the Foreign Account Tax Compliance Act (“FATCA”). The Tax Administrator shall prepare a description of the tax information reporting and other related tax matters, which shall be provided to the Fund Administrator for dissemination to Eligible Investors before or contemporaneously with their distribution payments. The Tax Administrator shall be compensated for all reasonable costs and expenses from the Fair Fund according to the terms of Tax Administrator’s Revised 2017-2018 Letter Agreement with the Commission, and tax obligations will be paid out of the Fair Fund.

6. *Reserve.* A reserve is established for future taxes and fees and expenses of the Tax Administrator in the amount of \$8,000.00 (the “Reserve”). After the distribution is completed, any remaining amount in the Reserve will become part of the residual described in paragraph 19 below.

7. *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.

III. Plan Procedures

8. *No Claims Process.* This Plan involves the return of consulting fees paid by four (4) Georgia public pension clients of the Respondents during the Harm Period. As such, there are no other claimants to whom distribution payments will be made, and each of the four (4) Eligible Investors know the amount of consulting fees each paid to the Respondents. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable. Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to calculate the harm to Eligible Investors.

9. *Specification of Eligible Investors.* The Net Fair Fund shall be distributed to the investors harmed by the conduct described in the Order (“Eligible Investors”). Based on its investigation, Commission staff has identified four (4) Eligible Investors.

⁴ Exchange Act Rel. No. 81057 (June 30, 2017).

⁵ Exchange Act Rel. No. 83172 (May 4, 2018).

10. *Methodology Used to Determine Distribution Payments.* The Fund Administrator determined the amount to be distributed to each Eligible Investor by using information collected by the Commission staff during its investigation. The distributable amount for each Eligible Investor is calculated as the amount of consulting fees paid by each Eligible Investor to Gray Financial during the Harm Period (the “Distribution Payment”).

The Net Fair Fund exceeds the total amount of consulting fees paid by the four (4) Eligible Investors, so each Eligible Investor will receive a Distribution Payment equal to the full amount of consulting fees paid to Gray Financial during the Harm Period.

The Fund Administrator has determined the Distribution Payments for each Eligible Investor to be:

Eligible Investor #1 - \$40,098.00

Eligible Investor #2 - \$50,630.00

Eligible Investor #3 - \$78,750.00

Eligible Investor #4 - \$54,593.00

In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund to compensate an investor’s harm. It is anticipated that there will be only one distribution to Eligible Investors.

11. *Procedures for Locating and Notifying Certain Eligible Investors.* From information obtained by the Commission staff based on the review and analysis of applicable records from its investigation, the Fund Administrator has identified the Eligible Investors as defined in paragraph 9 above. The Fund Administrator will coordinate with the Tax Administrator to obtain information that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund. To the extent possible, within sixty (60) days of the publication of the Plan for notice and comment, requests will be sent to each Eligible Investor whose tax information is uncertain, to supply IRS Forms W-8 or W-9 tax information, and such other information needed to ensure an efficient and accurate delivery of the full distribution payment (the “Request”). The Eligible Investor shall respond within thirty (30) days in order to receive a Distribution Payment.

12. *Undeliverable Mail.* If a Request and/or Distribution Payment is/are returned as undeliverable, the Fund Administrator will make his best practicable efforts to ascertain an Eligible Investor’s correct address. If another address is obtained, the Fund Administrator will resend the Request and/or Distribution Payment to the Eligible Investor’s new address within thirty (30) days of receipt of the returned mail. If the Request and/or Distribution Payment is returned again, and the Fund Administrator, despite his best practicable efforts, is unable to find an Eligible Investor’s correct address, the Fund Administrator, in his discretion, may remove such Eligible Investor from the distribution and the allocated distributable amount will remain in the Fair Fund.

Any Eligible Investor who relocates or otherwise changes contact information after receipt of the Request must promptly communicate any change in address or contact information to the Fund Administrator.

13. *Distribution Timing.* The Fund Administrator will use his best efforts to start the distribution within ninety (90) days of the Plan's approval.

14. *Disbursement of the Fair Fund.* The Fair Fund distribution to Eligible Investors will be implemented by the Commission and disbursed through BFS. Checks will be mailed or distribution payments will be electronically transferred to each Eligible Investor as instructed by the Fund Administrator. The Fund Administrator will compile the payee information and prepare a payment file in a Commission-approved format for submission to BFS. Pursuant to Rule 1101(b)(6) of the Commission's Rules,⁶ the Fund Administrator will obtain an order from the Commission to disburse the Fair Fund. All disbursements will be made pursuant to a Commission order.

Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of securities law violations.

The Fund Administrator will maintain information about uncashed checks, any returned checks due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors, reissuing payments when possible, and accounting for all payments. The amount of all uncashed payments will continue to be held in the Fair Fund.

15. *Uncashed Checks.* The Fund Administrator will make reasonable efforts to contact Eligible Investors to follow-up, including working with BFS, to obtain information about uncashed checks, any returned checks due to non-delivery, insufficient address and/or other deficiencies. The Fund Administrator will use best efforts to obtain additional information sufficient to reissue and/or re-send the uncashed checks. Checks issued by BFS will state on their face that they are valid for one (1) year. The amount of all uncashed checks will be sent to the U.S. Treasury as residual. The Fund Administrator is responsible for accounting for all payments.

16. *Accountings.* When all funds have been disbursed, except for the residual described in paragraph 19 of the Plan, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

⁶ 17 C.F.R. § 201.1101(b)(6).

17. *Amendments and Procedural Deadline Extensions.* The Fund Administrator shall take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan. The Fund Administrator will inform Commission staff of any changes needed to the Plan. If there are any changes to the Plan that are determined to be a material, Commission approval is required prior to implementation by amending the Plan. Immaterial changes may be made by the Fund Administrator. For good cause shown, the Fund Administrator, in consultation with the Commission staff, may extend any of the procedural deadlines set forth in this Plan.

18. *Procedures for Eligible Investor Inquiries.* Eligible Investor inquiries will be limited to questions regarding the calculations of Distribution Payments. The Fund Administrator will investigate and respond to any inquiry within thirty (30) days of receipt of the inquiry. The Fund Administrator's resolution will be conclusive and final.

19. *Residual and Disposition of Undistributed Funds.* A residual within the Fair Fund refers to any amounts remaining after the final disbursements to Eligible Investors from the Fair Fund. The residual may include, but is not limited to, funds from the unused Reserve, distribution checks that have not been cashed, checks that were not delivered or returned to the Fund Administrator, and Fair Fund tax refunds for overpayment or for waiver of IRS penalties. All residual funds remaining after all expenses of administration and taxes have been satisfied will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

20. *Termination of the Fair Fund.* The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred: (a) a final accounting, in a standard accounting format provided by Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; and (b) all taxes, fees and expenses have been paid by the Fair Fund. Upon Commission approval of the final accounting, the Commission staff shall seek an order from the Commission to approve the termination of the Fair Fund, the discharge of the Fund Administrator, and the transfer of any amount remaining in the Fair Fund to the U.S. Treasury.