

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20252**

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**In the Matter of**  
  
**Scott T. Wolfrum**  
  
**Respondent.**

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**PROPOSED PLAN OF**  
**DISTRIBUTION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20253**

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**In the Matter of**  
  
**Tyler C. Sadek,**  
  
**Respondent.**

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**I. OVERVIEW**

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”) comprised of disgorgement, prejudgment interest, and civil money penalties paid by Scott T. Wolfrum (“Wolfrum”)<sup>1</sup> and the civil money penalties paid by Tyler C. Sadek (“Sadek”)<sup>2</sup> (collectively, the “Respondents”) in the above-captioned matters.

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<sup>1</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 91401 (Mar. 24, 2021), (Admin. Proc. File No. 3-20252) (the “Wolfrum Order”).

<sup>2</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Advisers Act Rel. No. 5707 (Mar. 24, 2021), (Admin. Proc. File No. 3-20253) (the “Sadek Order” and together with the Wolfrum Order, the “Orders”).

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondents' conduct described in the Orders in connection with the undisclosed use and misappropriation of finder's fees associated with investing in the Foundry Mezzanine Opportunity Fund ("Security") from January 4, 2016 through October 12, 2017 (the "Relevant Period"). 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 each investor's harm. 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.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses associated with the undisclosed use and misappropriation of finder's fees in connection with investing in shares of the Security that were held during the Relevant Period.

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

## **II. BACKGROUND**

6. On March 24, 2021, the Commission issued the Wolfrum Order<sup>3</sup> instituting and simultaneously settling administrative and cease-and-desist proceedings against Wolfrum. In the Wolfrum Order, the Commission found that that Wolfrum failed to disclose conflicts of interest when recommending that his advisory clients invest in Foundry Mezzanine Opportunity Fund ("FMOF" or the "Fund"), a private fund that provides lending to and invests in small businesses. In the Wolfrum Order, the Commission further found that, from December 2015 to June 2018, Wolfrum sold more than \$20 million in interests in FMOF, almost all of which were recommended by Wolfrum and sold to his advisory clients. Wolfrum failed to disclose to his clients the conflicts of interest created by his and his family member's financial interests in two of the Fund's holdings and Wolfrum's receipt of \$140,125.00 in finder's fees for facilitating two different investments by the Fund.

7. Also on March 24, 2021, the Commission issued the Sadek Order,<sup>4</sup> a separate, but related settled order against Tyler C. Sadek ("Sadek"). In the Sadek Order, the Commission found that from 2016 to 2017, Sadek, a principal of Foundry Capital Group, LLC, an Indiana investment adviser to the FMOF, reviewed, edited, and approved newsletters issued to the Fund's investors and prospective investors that contained misleading statements and omissions. Specifically, the newsletters contained misleading statements and omissions about the financial and operational condition of Fund holdings and expected annual interest from Fund holdings.

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<sup>3</sup> Exchange Act Rel. No. 91401 (Mar. 24, 2021).

<sup>4</sup> Advisers Act Rel. No. 5707 (Mar. 24, 2021).

8. In their respective orders, the Commission ordered Wolfrum to pay \$140,125.00 in disgorgement, \$21,354.00 in prejudgment interest, and a \$75,000 civil money penalty and Sadek to pay a \$30,000 civil money penalty, for a collective total of \$266,479.00 to the Commission; and created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the monies collected can be distributed to harmed investors.

9. On November 22, 2023, the Commission issued an order consolidating the Fair Fund established in the Sadek Order with the Fair Fund established in the Wolfrum Order for the purposes of distribution administration.

10. Wolfrum and Sadek have paid in full. The Fair Fund consists of the \$266,479.00 collected from the Respondents pursuant to the Orders, and has been deposited in a Commission-designated account at the United States Department of the Treasury. Any interest accrued will be added to the Fair Fund.

### III. DEFINITIONS

As used in this Plan, the following definitions will apply:

11. **“Administrative Costs”** shall mean any tax obligations or investment costs.

12. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

13. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

14. **“Excluded Party”** shall mean: (a) the Respondents, or Respondents’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as the Fund Administrator; and (c) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

15. **“Fair Fund”** means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by the Respondents’ violations described in the Orders.

16. **“Final Determination Notice”** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 36, except for those whose Plan Notice were returned as “undeliverable,”

notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.

17. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

18. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

19. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

20. **“Plan Notice”** means a written notice from the Fund Administrator to each Preliminary Claimant regarding the Commission's approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator as a resource for additional information or to contact with questions regarding the distribution.

21. **“Plan of Allocation”** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

22. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Commission staff based on their review and analysis of applicable records obtained by the Commission during its investigation, who may have suffered losses in connection with the undisclosed use and misappropriation of finder's fees associated with investing in the Security during the Relevant Period.

23. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

24. **“Relevant Period”** is from January 4, 2016 through October 12, 2017.

25. **“Securities”** means Foundry Mezzanine Opportunity Fund.

26. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator's attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under

the Plan.

#### **IV. TAX COMPLIANCE**

27. On December 4, 2023, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.<sup>5</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its 2022-2024 Engagement Letter Agreement with the Commission.<sup>6</sup>

28. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

29. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

#### **V. FUND ADMINISTRATOR**

30. Keshia Ellis is proposed to be the fund administrator for the Fair Fund (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,<sup>7</sup> no bond is required since the Fund Administrator is a Commission employee.

31. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements,

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<sup>5</sup> See Order Appointing Tax Administrator, Exchange Rel. No. 99078 (Dec. 4, 2023).

<sup>6</sup> See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

<sup>7</sup> 17 C.F.R. § 201.1105(c).

including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

32. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

33. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

34. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of investing in the Security during the Relevant Period.

### Procedures for Locating and Notifying Preliminary Claimants

35. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

36. If any mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend it to the Preliminary Claimant's new address within thirty (30) days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

37. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

### Procedures to Request Plan Notice

38. Any Person who does not receive a Plan Notice, as described in paragraph 35, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within sixty (60) days from the approval of the Plan to establish that they should

be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The Fund Administrator will send the Person a Plan Notice within ten (10) days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

#### Failure to Respond to Plan Notice

39. If a Preliminary Claimant is requested to respond and fails to respond within sixty (60) days from the initial mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email. The second attempt will in no event take place more than forty-five (45) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

40. Disputes will be limited to the calculation of a Preliminary Claimant's Recognized Loss. Within ninety (90) days of the initial mailing of the Plan Notice, the Fund Administrator must receive a written communication detailing any 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.

#### Final Determination Notices

41. Within one hundred twenty (120) days of the initial mailing of the Plan Notices, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 40 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 39 above, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

#### Distribution Methodology

42. The Fund Administrator will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant. All Eligible Claimants whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve

43. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

44. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 57 below.

#### Preparation of the Payment File

45. Within one hundred eighty (180) days of Commission approval of the Plan, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List") to make disbursements through the U.S. Treasury.

#### Distribution of the Fair Fund

46. Pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(6), the Commission staff will obtain an order from the Commission authorizing the disbursement of funds from the Net Available Fair Fund for distribution to Payees in accordance with the Payee List. The U.S. Treasury will mail checks or electronically transfer funds to each Payee as instructed by the Fund Administrator in accordance with the Payee List.

47. All checks will bear a stale date of one year from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the U.S. Treasury will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 51.

48. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one year from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

49. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Commission to compensate investors for harm because of securities law violations.

#### Post Distribution; Handing of Returned or Uncashed Checks; and Reissues



50. The Fund Administrator shall use her best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as “undeliverable.” If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than ninety (90) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided, and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. If the Fund Administrator is unable to find a Payee’s correct address, the Fund Administrator, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

51. The Fund Administrator will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void one year from issuance.

52. The Fund Administrator will work with the Bank and maintain information about uncashed checks and 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 is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

53. The Fund Administrator will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

54. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

#### Receipt of Additional Funds

55. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission's termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission's Rules.

#### Disposition of Undistributed Funds

56. If funds remain following the initial distribution, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds, pursuant to the Commission's Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

57. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the "Residual"). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

58. Once the Fund Administrator, in consultation with the Commission staff, deems further distribution of the Fair Fund to investors infeasible, the Fund Administrator will direct any uncashed Distribution Payments to be voided, and return any funds remaining in the Escrow and Deposit Accounts to the Commission to be added to the Residual.

59. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to the Respondents would be inconsistent with the equitable principle that no Person should profit from his wrongdoing. Therefore, in these circumstances distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

#### Administrative Costs

60. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission's Rules.

#### Accountings

61. When all funds have been disbursed, except for the Residual described in paragraph 57 above 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 Commission's approval 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.

#### Termination of the Fair Fund

62. 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 the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; and (b) all Administrative Costs have been paid. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of the Residual that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; and (c) termination of the Fair Fund.

## **VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT**

63. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the “Notice”) shall be published on the Commission’s website <http://www.sec.gov/litigation/fairfundlist.htm>. Any Person wishing to comment on the Plan must do so in writing by submitting their comments 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, N.E., Washington, D.C. 20549-1090; (b) by using the Commission’s Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or (c) by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by e-mail or via the Commission’s website should include “Administrative Proceeding File Nos. 3-20252 and 3-20253” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation<sup>1</sup> is designed to compensate investors for their losses in connection with the undisclosed use and misappropriation of finder's fees associated with investing in the Foundry Mezzanine Opportunity Fund ("Security") from January 4, 2016 through October 12, 2017 (the "Relevant Period") due to the misconduct of the Respondents described in the Orders. Based upon records obtained by the Commission during its investigation, the Commission staff has identified the Preliminary Claimants.

The Recognized Loss for each Preliminary Claimant will be calculated as:

- A. The Preliminary Claimant's net principal invested in the Security as of June 24, 2017 multiplied by the \$27,500 finder's fee paid on June 24, 2017, divided by the sum of all Preliminary Claimant's net principal invested in the Security as of June 24, 2017, *plus*
- B. The Preliminary Claimant's net principal invested in the Security as of October 12, 2017 multiplied by the \$120,000 finder's fee paid on October 12, 2017, divided by the sum of all Preliminary Claimant's net principal invested in the Security as of October 12, 2017.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: Each Eligible Claimant's distribution amount will equal his, her, or its Recognized Loss, plus any "Reasonable Interest" awarded. The distribution amount will be subject to the "Offset for Prior Recovery" and the "Minimum Distribution Amount" provisions described below.

Offset for Prior Recovery: To avoid payment of a windfall, an Eligible Claimant's distribution amount will be no larger than his, her or its Recognized Loss *minus* the amount of any compensation for the loss that resulted from the conduct described in the Orders that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator ("Prior Recovery"), *plus* any Reasonable Interest awarded. That is, the distribution amount will be capped at the Recognized Loss *less* the Prior Recovery, *plus* any Reasonable Interest awarded.

Reasonable Interest: The Fund Administrator, in consultation with the Commission staff, may include interest in the distribution amount to compensate for the time value of money.

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, Reasonable Interest will be awarded on a *pro-rata* basis from the excess funds.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible and his, her or its distribution amount may be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Each Payee will receive a Distribution Payment equal to his, her, or its calculated distribution amount.