

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18408

In the Matter of

**MAXWELL TECHNOLOGIES, INC.,
VAN M. ANDREWS, DAVID J.
SCHRAMM, AND JAMES W.
DeWITT, Jr., CPA,**

Respondents.

PROPOSED PLAN OF DISTRIBUTION

Introduction

1. 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 in the above-referenced proceeding from Maxwell Technologies, Inc. (“Maxwell”), Van M. Andrews (“Andrews”), David J. Schramm (“Schramm”), and James W. DeWitt, Jr. (“DeWitt”) (collectively, the “Respondents”) to investors who purchased shares of Maxwell common stock on the NASDAQ at inflated prices during the period from February 26, 2012 through March 19, 2013, inclusive (“Recovery Period”), and who suffered losses in the value of their investment subsequent to disclosures by the Respondents.

Background

2. On March 27, 2018, the Securities and Exchange Commission (the “Commission”) issued an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)¹ against the Respondents. In the Order, the Commission found that, from December 2011 through January 2013, Maxwell, a California-based company that develops, manufactures, and markets energy storage and power delivery products, through its former officers Andrews, Schramm, and DeWitt, engaged in an accounting fraud scheme that improperly recognized over \$19 million in revenue from future quarters in violation of U.S. Generally Accepted Accounting Principles. The Commission ordered Maxwell, Andrews, and DeWitt to pay civil money

¹ Securities Act Rel. No. 10472 (Mar. 27, 2018).

penalties of \$2.8 million, \$50,000, and \$20,000, respectively; and ordered Schramm to disgorge \$33,878 and pay prejudgment interest of \$6,113 and a civil money penalty of \$40,000. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, the Commission established a Fair Fund so that the civil money penalties could be distributed with disgorgement and prejudgment interest (the “Fair Fund”). The Respondents have since paid in \$2,937,491 to an interest bearing account at the U.S. Treasury’s Bureau of Fiscal Services, with the remainder to be paid by Andrews by March 19, 2019. Any additional funds received will be added to the Fair Fund for disbursement to investors pursuant to the Plan.

3. The Fair Fund is deposited in an interest-bearing account at the United States Treasury Department’s (“Treasury”) Bureau of the Fiscal Service (“BFS”). All BFS fees will be paid by the Fair Fund. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over implementation of the Plan.

Fund Administrator

4. The Commission has appointed Epiq Systems, Inc. as the Fund Administrator (the “Fund Administrator”) of the Fair Fund.²

5. The Fund Administrator has obtained a bond in the manner prescribed by Rule 1105(c) of the Rules in the amount of \$2,949,991. The bond premium will be paid from the Fair Fund.

6. The Fund Administrator also serves as the Claims Administrator for a related class action, *In Re Maxwell Technologies Inc. Securities Litigation*, No. 3:13-CV-580 (S.D. Cal.) (the “Class Action”) and in that capacity has identified participants in the settlement class. The Potential Claimants as defined below are a subset of the settlement class. The Fund Administrator has confirmed permission to use the claims information obtained in the Class Action in connection with the Plan, thereby obviating the need for a claims and/or deficiency process in the current proceeding.

7. 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 identify Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries; developing a claims database; preparing communications to accompany any distribution; preparing accountings; cooperating with the Tax Administrator (defined below) to ensure compliance with tax laws, rules, and regulations including the Foreign Account Tax Compliance Act (FATCA); determining and ensuring compliance, as appropriate, with all foreign jurisdiction requirements for serving notices and otherwise implementing the Plan; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria in the Plan as to Potential Claimant eligibility; disbursing the Fair Fund in accordance with the

² Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 83727 (July 27, 2018).

Plan; performing outreach on returned and stale checks; and reporting to the Commission staff and the Commission as required.

8. All fees and expenses of the Fund Administrator will be paid by the Fair Fund. The Fund Administrator shall submit invoices for completed services to the Commission staff for filing with the Commission; upon approval of an application by the Commission, the Fund Administrator will be paid its reasonable fees and expenses for those services.

Tax Administrator

9. Tax Administrator. The Commission has appointed Miller Kaplan Arase LLP as the Tax Administrator for the Fair Fund (the “Tax Administrator”).³ The Tax Administrator is required to administer the Fair Fund as 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 Tax Administrator is responsible for, among other things, all income tax related reporting requirements including the preparation and filing of tax returns.

10. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission. All taxes and the fees and expenses of the Tax Administrator will be paid by the Fair Fund.

Definitions

11. As used in the Plan, the following definitions apply:
- (a) *Administrative Costs*. All costs of administering the Fair Fund, including taxes, fees, and expenses of tax and fund administration and all investment costs.
 - (b) *Distribution Methodology*. The methodology used to determine eligibility for distribution under the Plan and to calculate Distribution Payments as set forth at ¶¶ 16-26.
 - (c) *Distribution Payment*. A payment to an Eligible Claimant in accordance with the Plan.
 - (d) *Eligible Claimant*. A Potential Claimant who is not an Excluded Party and who is determined by the Fund Administrator to be eligible under the Plan for a Distribution Payment.
 - (e) *Eligible Loss Amount*. For each Eligible Claimant, the sum of all recognized losses per share as calculated in accordance with ¶ 17, below.

³ Order Appointing Tax Administrator, Exchange Act Rel. No. 83333 (May 25, 2018).

- (f) *Excluded Parties.* The Respondents and any assigns, heirs, spouses, parents, dependents or controlled entities of any of the Respondents, and the Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as Fund Administrator.
- (g) *Net Fair Fund.* The assets of the Fair Fund, including investment income, less Administrative Costs.
- (h) *Distribution Notice.* The written notice from the Fund Administrator to Eligible Claimants accompanying the distribution, as further described below, ¶ 40.
- (i) *Potential Claimants.* Individuals and entities, or their lawful successors, who purchased the Security during the Recovery Period.
- (j) *Recovery Period.* February 26, 2012 through March 19, 2013, inclusive.
- (k) *Security.* Maxwell common stock traded on the NASDAQ under the trading symbol MXWL.
- (l) *Summary Notice.* The notice published in print or internet media pursuant to ¶13(g) below. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, define the criteria for eligibility under the Plan, state that Potential Claimants will be identified, and claims evaluated based on information obtained by the Fund Administrator in connection with the Class Action and not through a claims process; and provide contact information for the Fund Administrator.

Plan Administration

12. 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. The Fund Administrator will identify Potential Claimants from a review of the claims information that it obtained in connection with the Class Action.

13. Within forty-five (45) days of Commission approval of the Plan, the Fund Administrator shall:

- (a) create a mailing and claim database of all Potential Claimants based upon information from the Class Action;
- (b) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring updated mailing information for Potential Claimants;

- (c) establish and maintain a website dedicated to the Fair Fund. The Fair Fund's website, located at www.MaxwellFairFund.com, will make available a copy of the approved Plan, provide information regarding the no-claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions in downloadable format, and provide such other information that the Fund Administrator believes will be beneficial to Potential Claimants;
- (d) provide a copy of the approved Plan and Plan Notice to the Commission staff and request that the Commission staff establish a link to the Fair Fund's website on the Commission webpage dedicated to this administrative proceeding, located at www.sec.gov/divisions/enforce/claims/maxwell-technologies.htm and on the Commission's public website at www.sec.gov/litigation/fairfundlist.htm.
- (e) establish and maintain a traditional mailing address and an email mailing address, which will be listed on all correspondence from the Fund Administrator and posted on the Fair Fund's website;
- (f) establish and maintain a toll-free telephone number for Potential Claimants to call to speak to a representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The Fund Administrator will advise the Commission staff of the toll-free number, post the number on the Fair Fund's website, and include the number on all correspondence; and
- (g) publish a copy of a Summary Notice, approved by Commission staff, in a manner and through media deemed appropriate by the Fund Administrator and acceptable to the Commission staff.

14. The Fund Administrator will have available, and use as appropriate, translation services in connection with all contacts with Potential Claimants and Eligible Claimants, including the Distribution Notice, Fair Fund's website, and toll-free number so that all communications can be as effective as practicable. Translations may be requested by Potential Claimants by contacting the Fund Administrator by mail, email, or the toll-free number.

15. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website and any scripts used in connection with communications with Potential Claimants.

Distribution Methodology

16. This methodology is designed to compensate Eligible Claimants based on their losses from purchases of the Security during the Recovery Period due to the disclosures made by the Respondents. The amount to be distributed to each Eligible Claimant will be determined as described in the following paragraphs.

17. For shares of the Security that were purchased during the Recovery Period, the following chart quantifies the recognized loss per share according to the purchase and sale dates:

Purchase Date Range (inclusive)	Sale Date Range (inclusive)	Recognized Loss Per Share
2/26/2012 and 4/26/2012	2/26/2012 and 4/26/2012	\$0.00
	4/27/2012 and 3/7/2013	lesser of (Purchase Price – Sale Price) and \$6.40
	3/8/2013 and 3/19/2013	lesser of (Purchase Price – Sale Price) and \$7.51
	3/20/2013 and 6/17/2013	lesser of (Purchase Price – Sale Price) and \$9.12
	Held after 6/17/2013	Purchase Price – \$7.08
4/27/2012 and 3/07/2013	4/27/2012 and 3/7/2013	\$0.00
	3/8/2013 and 3/19/2013	lesser of (Purchase Price – Sale Price) and \$1.11
	3/20/2013 and 6/17/2013	lesser of (Purchase Price – Sale Price) and \$2.72
	Held after 6/17/2013	Purchase Price – \$7.08
3/8/2013 and 3/19/2013	3/8/2013 and 3/19/2013	\$0.00
	3/20/2013 and 6/17/2013	lesser of (Purchase Price – Sale Price) and \$1.61
	Held after 6/17/2013	Purchase Price – \$7.08

For example:

- (a) A share purchased on February 27, 2012 at \$18.69 and sold on April 24, 2012 would have a Recognized Loss of \$0.00;
- (b) A share purchased on February 27, 2012 at \$18.69 and sold on March 6, 2013 at \$9.00 would have a Recognized Loss of \$6.40, which is the lesser of $(\$18.69 - \$9.00) = \$9.69$ and \$6.40;

- (c) A share purchased on March 6, 2013 at \$9.10 and sold May 14, 2013 at \$6.44 would have a Recognized Loss of \$2.66, which is the lesser of $(\$9.10 - \$6.44) = \$2.66$ and $\$2.72$; and
- (d) A share purchased on March 6, 2013 at \$9.10 and sold on June 28, 2013 at \$7.00 would have a Recognized Loss of \$2.02, which is $(\$9.10 - \$7.08) = \$2.02$.

18. Price. All prices mentioned in the calculations exclude all fees and commissions. Purchases and sales shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

19. FIFO Methodology: For each Potential Claimant who made multiple purchases and sales of the Security during the Recovery Period, the transactions will be calculated according to the first-in, first-out (“FIFO”) method. The earliest sales during the Recovery Period will be matched first against any holdings at the opening of the Recovery Period. Once the beginning holdings have all been matched, or in the event that the Potential Claimant had no beginning holdings, then any further sales would be matched against the earliest Recovery Period purchases and chronologically thereafter.

20. Short Sales: If the sale date for a share falls before the purchase date (“Short Sale”), then the share has a Recognized Loss of \$0.00.

21. Acquisitions: The receipt or grant to the Potential Claimant by gift, devise, inheritance, or operation of law of the Security during the Recovery Period is not considered an eligible purchase if the original purchase did not occur during the Recovery Period. Such shares will be excluded from the calculation of the Potential Claimant’s Eligible Loss Amount. Only one claim may be submitted with regard to the same transactions in the Security, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored assuming it is supported by proper documentation.

22. Eligible Loss Amount: A Potential Claimant’s Eligible Loss Amount will be calculated as the sum of Recognized Losses on all shares purchased during the Recovery Period, as calculated in accordance with ¶ 17. If the Eligible Loss Amount is less than \$0.00, reflecting an overall gain, the Eligible Loss Amount will be \$0.00.

23. Market Loss Limitation: If a Potential Claimant’s actual losses in the Security are less than the Eligible Loss Amount, then the Eligible Loss Amount shall be limited to the actual loss amount. Investors whose total proceeds from sales and holdings of the Security purchased during the Recovery Period exceeded the total purchase amount for such shares shall have an Eligible Loss Amount of \$0.00. Shares held as of the close of trading on June 17, 2013 shall be ascribed a holding value of \$7.08 per share for purposes of this calculation.

24. Retirement Plans: Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and such plan’s participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan’s participants. The Fund Administrator will distribute any payments on such

claims directly to the administrator, custodian, or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

25. Pro Rata Distribution: If the Net Fair Fund has sufficient funds, each Eligible Claimant will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount. If the Net Fair Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Claimants, then each Eligible Claimant will receive a Distribution Payment that their Eligible Loss Amount bears in proportion to the total Eligible Loss Amounts of all Eligible Claimants (“*Pro-Rata Share*”).

26. Minimum Distribution Amount: If an Eligible Claimant’s Distribution Payment is less than \$10.00, that Eligible Claimant will not receive a Distribution Payment and the funds will be distributed to other Eligible Claimants whose Distribution Payments are greater than \$10.00.

Establishment of Escrow Account

27. The Fund Administrator will establish an escrow account (the “Escrow Account”) at a United States commercial bank (the “Bank”) that is acceptable to the Commission staff. The Escrow Account shall be established pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the Commission staff, in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund as described above. The Fund Administrator shall also establish with the Bank a separate deposit account (the “Deposit Account”) (*e.g.*, controlled distribution account, managed distribution account, linked checking account or investment account) for the purpose of funding distribution payments to be distributed to Eligible Claimants by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: Maxwell SEC Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *Maxwell Technologies, Inc., et al.*, Administrative Proceeding File No. 3-18408.

28. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term 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 Claimants, and tax obligations, 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. All interest earned will accrue for the benefit of the Fair Fund.

29. Prior to the receipt of any funds in the Escrow Account, the Bank will provide to the Fund Administrator an attestation, in a form acceptable to the Commission staff, that all funds in the Escrow Account will be held for the Fair Fund and that the Bank will not place any lien or encumbrance of any kind upon the funds. The Fund Administrator will be the signatory on the Escrow Account, subject to the continuing jurisdiction and control of the Commission.

30. Upon transfer from the BFS, all funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Deposit Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

31. The Fund Administrator shall provide duplicate 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.

Distribution of the Fair Fund

32. The Fund Administrator, in consultation with Commission staff and the Tax Administrator, shall determine the Net Fair Fund by retaining a prudent reserve to pay Administrative Costs, as well as a reasonable contingency for potential unforeseen issues.

33. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of the Plan. An Eligible Claimant’s Eligible Loss Amount, as determined in accordance with the distribution methodology above, will be used to determine the amount of their Distribution Payment.

34. The Fund Administrator shall distribute the Net Fair Fund to all Eligible Claimants only after a Commission Order to Disburse has issued.

35. The Fund Administrator may make one or more distributions to Eligible Claimants pursuant to the Payee List process described below and otherwise pursuant to the Plan. With respect to distributions after the initial distribution, and unless otherwise determined by the Fund Administrator in consultation with the Commission staff, each distribution will be limited to those Eligible Claimants that negotiated the distribution checks issued in the immediately preceding distribution, or received electronic payments.

36. Within ninety (90) days following the date that the Commission approves the Plan (“Plan Approval Date”), the Fund Administrator shall prepare a final payee list (“Payee List”) that includes the names and addresses and Eligible Loss Amounts of Eligible Claimants.

37. The Fund Administrator will also provide a “Reasonable Assurance Letter” as to the completeness and accuracy of the Payee List.

38. Upon receipt and review of the Payee List and Reasonable Assurance Letter, the Commission staff will obtain authorization from the Commission to disburse consistent with

Rule 1101(b)(6) of the Rules, 17 C.F.R. § 201.1101(b)(6). Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the Escrow Account. The Fund Administrator shall then use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within fifteen (15) business days of the release of the funds into the Escrow Account (the “Initial Issue”). All efforts will be coordinated to limit the time between the Escrow Account’s receipt of the funds and the issuance of Distribution Payments.

39. All Distribution Payments will be issued by the Fund Administrator from the Deposit Account. All checks will bear a stale date of one hundred twenty (120) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. Except as otherwise provided in the Plan, an Eligible Claimant’s claim shall be extinguished if he, she or it fails to negotiate his, her or its check by the stale date. All such funds will remain in the Net Fair Fund.

40. All Distribution Payments shall be preceded or accompanied by the Distribution Notice that will include, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient 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 after one hundred twenty (120) days; and (d) the contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. The Distribution Notice shall be submitted to the Commission staff and the Tax Administrator for review and approval. The Distribution Payment checks, on their face or the accompanying mailbag, shall clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

41. Electronic or wire transfers may be utilized at the discretion of the Fund Administrator to transfer approved Distribution Payments on behalf of twenty (20) or more Eligible Claimants. Wire transfers will be initiated by the Fund Administrator using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Fund Administrator’s senior staff.

Post Distribution: Returned and Uncashed Checks

42. The Fund Administrator will attempt to locate any Eligible Claimant whose mailing is returned as undeliverable by the U.S. Postal Service, including an advanced address search, if and as feasible, and will document all such efforts. The Fund Administrator shall immediately re-mail any returned undeliverable mail for which the U.S. Postal Service has provided a forwarding address. Additional efforts by the Fund Administrator to identify new addresses for returned undeliverable mail will be conducted as necessary and economically reasonable after consultation with the Commission staff. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for persons whose mailing is returned as undeliverable; all such costs shall be paid by the Fair Fund.

43. The Fund Administrator will reissue undelivered checks so long as the new address is received within one hundred twenty (120) days of the Initial Issue. Furthermore, the Fund Administrator will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of Commission staff and will reissue such checks, if necessary, within one hundred twenty (120) days of the Initial Issue.

44. The Fund Administrator shall reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after sixty (60) days from the issuance and in no event will a check be reissued more than one hundred twenty (120) days from the Initial Issue.

45. A residual within the Fair Fund will be established for any amounts remaining after all assets have been disbursed. The residual may include, among other things, funds reserved for future taxes and for post distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds. Upon completion of all distributions under the Plan, the Fund Administrator shall remit the residual to the Commission for transfer to Treasury after the Commission approves the final accounting.

Accountings and Termination of the Fair Fund

46. Once the Fair Fund has been transferred from the BFS to the Bank, the Fund Administrator will provide an accounting to the Commission staff during the first ten (10) days after the end of each quarter on a standardized accounting form provided by the Commission staff. Each accounting shall detail all monies earned or received and all monies spent in connection with the administration of the Plan during the reporting period.

47. Upon completion of all distributions pursuant to the Plan, the Fund Administrator shall make arrangement for the payment of taxes and administration fees and expenses, transfer all remaining funds to the Commission, and submit a final accounting to the Commission on the standardized accounting form provided by the Commission staff. The Fund Administrator also shall submit a final report to the Commission staff summarizing the distribution, including disbursed amounts, returned or unnegotiated payments, outreach efforts and costs, final distribution statistics including statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

48. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (a) a final accounting, in an SEC standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator for approval, and has been approved, by the Commission; (b) all taxes, fees and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission for transfer to Treasury. The Commission staff shall seek an order from the Commission, as appropriate, approving the final accounting, terminating the Fair Fund, canceling the Fund Administrator's bond, discharging the Fund Administrator, and transferring any amount remaining in the Fair Fund, and any amounts returned to the Fair Fund in the future, to Treasury.

Miscellaneous

49. All Administrative Costs shall be paid by the Fair Fund, first from the interest earned on the funds, and if the interest is not sufficient, from the corpus of the Fair Fund.

50. When administering the Plan, the Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the secretary by delegated authority, or an Administrative Law Judge; and/or any investor information provided by Commission staff.

51. The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan and to effectuate the general purposes of the Plan. The Fund Administrator will inform Commission staff of any changes needed to this Plan. Upon approval by the Commission staff, the Fund administrator may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Commission approval is required by amending this Plan prior to implementation of the change.

52. The Fund Administrator will maintain all documents, including documents in any media, for six (6) years after approval of the final accounting. Pursuant to Commission direction, the Fund Administrator will either turn over to the Commission or destroy all documents six (6) years after the approval of the final accounting.

Notice and Comment Period

53. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (“Notice”) will be published 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 Number 3-18408” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.