

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16753

In the Matter of :

SIGNATOR INVESTORS, INC. :

and :

GREGORY J. MITCHELL, :

Respondents. :

ADMINISTRATIVE PROCEEDING
File No. 3-16754

In the Matter of :

CORY D. WILLIAMS :

Respondent. :

PROPOSED PLAN OF DISTRIBUTION

I. Overview

1. *Purpose.* The Division of Enforcement (“Division”) submits this proposed 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 Signator Investors, Inc. (“Signator”), Gregory J. Mitchell (“Mitchell”) and Cory D. Williams (“Williams”) (collectively, the “Respondents”) in the above-captioned matters, and monies recovered by the Commission in a related federal district court civil action.

2. *Background.* On August 13, 2015, the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions against Signator, a registered broker-dealer and investment adviser

and Mitchell, a Director of Compliance at Signator (the “Signator and Mitchell Order”)¹. Also, on August 13, 2015, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Williams, a registered representative and investment adviser representative at Signator collectively, with the Signator and Mitchell Order, the “Orders”).²

In the Orders, the Commission found that Signator and Mitchell failed reasonably to supervise James R. Glover (“Glover”) and Williams, former registered representatives and investment adviser representatives at Signator with a view of preventing and detecting Glover’s and Williams’ violations of the federal securities laws. While associated with Signator, from approximately May 1998 through May 2012, Glover conducted an offering fraud that defrauded approximately 125 Signator advisory clients and brokerage customers of approximately \$13.5 million by soliciting them to invest in Colonial Tidewater Realty Income Partners, LLC (“CTRIP”), a security not approved for sale by Signator’s representatives. Glover made materially false and misleading statements regarding the financial health of CTRIP, the expected returns and risk of investing, and deceived investors by, among other things, creating the false impression that CTRIP was a Signator-approved investment. Glover and Williams met with investors to discuss investments in CTRIP in Signator’s offices and provided clients with reports generated from Signator computer systems that included false valuations of their CTRIP investments. Williams assisted Glover in managing Signator’s advisory client portfolios, including clients who invested in CTRIP. Williams also breached his fiduciary duty to his clients by failing to disclose to them that he had received undisclosed fees from CTRIP. Williams knew that a substantial number of his advisory client were investing in CTRIP, but he knew virtually nothing about this unregistered offering, except that it was not an investment sanctioned or approved by Signator.

As a result of the conduct described in the Orders, the Commission ordered Signator to pay a civil penalty of \$450,000; Mitchell to pay a civil penalty of \$15,000, and Williams to pay disgorgement of \$94,191, prejudgment interest of \$9,854 and a civil penalty of \$94,191 to the Commission.

Signator and Mitchell have paid the amounts ordered by the Commission (\$465,000). Williams has defaulted on his payment.

The Signator and Mitchell Order created a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties, along with the disgorgement and prejudgment interest, collected can be distributed to harmed investors (the “Fair Fund”), and further provides that the Fair Fund, may accept funds paid in a related or federal court action or administrative proceeding arising out of the same underlying facts.

¹ Exchange Act Rel. No. 75690 (Aug. 13, 2015).

² Exchange Act Rel. No. 75691 (Aug. 13, 2015).

On August 13, 2015, the Commission also filed a related civil action (the “Civil Action”) in the District Court of Maryland against CTRIP, Glover and Sherman T. Hill (“Hill”).³ On August 20, 2015, the Court entered Final Judgments against CTRIP, Glover and Hill, ordering: CTRIP to pay \$1,319,386 (disgorgement of \$527,844, prejudgment interest of \$66,542, and a civil penalty of \$725,000); Glover to pay \$1,354,105 (disgorgement of \$839,128, prejudgment interest of \$64,977, and a civil penalty of \$450,000); and Hill to pay a civil penalty of \$75,000.

The Commission has recovered a total of \$534,735.15 from the Civil Action, which has been added to Fair Fund.⁴

The Fair Fund consists of the \$465,000 paid by Signator and Mitchell, together with the \$534,735.15 recovered from the Civil Action for a total of \$999,735.13. Any additional funds collected from the Civil Action or received from Williams will be added to the Fair Fund for distribution to investors, pursuant to this Plan. 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”), and all interest accrued will be added to the Fair Fund.

This Plan provides for the distribution of the Fair Fund, plus accrued interest and earnings thereon, less the Reserve (defined below) for taxes, investment fees, and fees and expenses of the Tax Administrator (“Net Available Fair Fund”) to those Eligible Investors, as defined in paragraph 7 below.

3. *Jurisdiction and Control.* 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 its implementation.

II. Definitions

As used herein, the following definitions shall apply:

4. “Costs” shall mean all costs of administering Fair Fund, including taxes, fees, and expenses of administration. All 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.

5. “Distribution Payment” shall mean the payment made to an Eligible Investor in accordance with the Plan. No Distribution Payment shall be made under the Plan for less than the “Minimum Distribution Amount”.

6. “Eligible Investor” shall mean an “Investor”, identified by the Commission staff during its investigation who suffered a Net Loss; whose Distribution Payment under the Plan

³ *SEC v. Colonial Tidewater Realty Income Partners, LLC, et al.*, Civ. Act. No. 1:15-cv-02401-ELH (D. Md., Aug. 13, 2015).

⁴ The Court ordered any funds recovered in the Civil Action to be paid to the Commission and distributed, with the funds collected pursuant to the Orders, in accordance with a distribution plan to be approved by the Commission in the Administrative Proceedings. *Id.* at Dkt. Nos. 148 and 161.

equals or exceeds the “Minimum Distribution Amount”; and who is determined eligible for a payment under the methodology described in paragraph 19 below.

7. “Investment” shall mean the amount invested by an Investor as determined by the Fund Administrator.

8. “Investor” shall mean any person or entity identified by the Commission staff during its investigation of the underlying securities violations, who/which were harmed by the Respondents’ conduct described in the Orders.

9. “Minimum Distribution Amount” shall mean the specified dollar amount that a Distribution Payment must equal or exceed in order for a distribution to be made to an Eligible Investor. No Eligible Investor shall receive a distribution unless the Distribution Payment is equal to or greater than \$10.00.

10. “Net Available Fair Fund” shall mean the Fair Fund, plus accrued interest and earnings thereon, less the Reserve.

11. “Net Loss” shall mean an Investor’s investment less any withdrawals by the investor or “Recovery Amounts” received by the Investor.

12. “Recovery Amount” shall mean the amount recovered by an Investor prior to a distribution under this Plan from private litigation, private settlements with Signator and Signator’s parent company, or NASD arbitration awards.

13. “Reserve” shall mean the total amount reserved from the Fair Fund to pay all costs of administering the Plan. The Reserve is estimated to be \$28,670.00, consisting of: (a) \$20,455.00 for estimated future taxes, investment fees, and the fees and expenses of the Tax Administrator, and (b) administrative expenses of the Third-Party engaged to assist the Fund Administrator in implementing the Plan in the amount of \$8,215.00. After the distribution is completed, any remaining amounts in the Reserve will become part of the Residual described in paragraph 28 below.

III. Administration of the Plan

14. *Fund Administrator.* Noel Gittens is proposed to be the fund administrator for the Fair Fund (the “Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,⁵ no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will, among other things: oversee the administration of the Fair Fund; obtain contact and mailing information for the Eligible Investors; distribute money from the assets of the Fair Fund to Eligible Investors in accordance with the Plan; resolve payment issues, prepare a final accounting; and provide the Tax Administrator with funds to pay tax

⁵ 17 C.F.R. § 201.1105(c).

liabilities and tax compliance fees and costs. The Fund Administrator will engage a third-party, Analytics Consulting LLC, to perform some of the administrative tasks associated with implementing the Plan (the “Third-Party”). The Fund Administrator may be removed at any time by order of the Commission or hearing officer.

15. *Tax Administrator.* Pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds governing calendar years 2019-2021,⁶ the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund.⁴ 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 2019-2021 Letter Agreement with the Commission, and tax obligations will be paid out of the Fair Fund.

16. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund 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.

IV. Plan Procedures

17. *No Claims Process.* 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 Net Loss as described in paragraph 11 above. 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.

18. *Locating Investors.* Subject to paragraph 20 below regarding each Investor’s obligation to communicate changes in contact information to the Fund Administrator, the Fund Administrator will use his best efforts to ensure all communications are properly directed to Investors. Review of the information provided by the Commission staff, and use of commercial computer databases regularly available to the Division of Enforcement shall constitute best efforts to locate and communicate with Investors.

19. *Methodology for Determining Distribution Payments.* The Plan uses the “Net Loss” methodology to calculate the distribution payments to Eligible Investors. Under the Net Loss methodology, each Eligible Investor will receive a *pro-rata* distribution from the Net

⁶ Exchange Act Rel. No. 85174 (Feb. 22, 2019).

⁴ Exchange Act Rel. No. 88005 (Jan. 17, 2020).

Available Fair Fund, and the distribution amount is calculated based upon each Eligible Investor's Net Loss in proportion to total Net Loss of all Eligible Investors.

Based upon records obtained, and subject to the methodology below, the Fund Administrator has identified the Eligible Investors and determined the amount to be distributed to each Eligible Investor in the following manner:

- (a) Determine each Eligible Investor's Net Loss;
- (b) Calculate the "Total Net Loss" of all Eligible Investors as the sum of the Net Losses of all Eligible Investors;
- (c) Calculate each Eligible Investor's "*Pro-Rata Share*" by dividing each Eligible Investor's Net Loss by the Total Net Loss;
- (d) Calculate each Eligible Investor's "Tentative Distribution Payment" by multiplying the Eligible Investor's *Pro-Rata Share* by the Net Available Fair Fund;
- (e) Eligible Investors whose Tentative Distribution Payment is less than the Minimum Distribution Amount will be removed from the list of Eligible Investors, and steps (b) through (d) will be repeated resulting in a Distribution Payment for each remaining Eligible Investor.

Based on information obtained during the Commission's investigation and in accordance with the methodology for determining harm above, the Fund Administrator has identified approximately sixty (61) Eligible Investors. Under the Plan, each Eligible Investor will receive a distribution payment preliminarily determined to be approximately 29% of the Eligible Investor's Net Loss amount. 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 investors' Net Losses. If sufficient funds are recovered subsequent to this distribution, and the Fund Administrator determines a second distribution to be feasible, such distribution will follow the methodology outlined above.

20. *Procedures for Locating and Notifying Investors and Investors Obligation with Respect to the Plan Notice.* 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 Investors as defined in paragraph 8. 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. Within thirty (30) days of approval of the plan by the Commission, the Third-Party at the direction of the Fund Administrator will send to each Eligible Investor's last known email address (if known) and/or mailing address a notice (the "Plan Notice") 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; a Net Loss calculation and the amount of their Tentative Distribution; and a request to provide any

information needed to ensure an efficient and accurate delivery of their full distribution payment(s), including but not limited to, confirmation of their contact information sufficient to issue a distribution payment and for those Investors whose tax information is uncertain to supply IRS Forms W-8 or W-9 tax information.

21. *Failure to Respond.* If an Investor fails to provide the information requested in the Plan Notice within thirty (30) days from the mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Investor by U.S. Postal Service Mail. The last attempt will in no event take place more than fourteen (14) days from the mailing of the Plan Notice. If an Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in his discretion, may remove such Investor from the distribution and the allocated Tentative Distribution will be added to the Net Available Fair Fund and will be distributed to the remaining Investors, pursuant to the methodology described in paragraph 18 above. In no event will an Investor receive from the Fair Fund more than the Investor's Net Loss amount.

22. *Undeliverable Mail.* If a Plan Notice and/or Distribution Payment is/are returned as undeliverable, the Fund Administrator will make best practicable efforts to ascertain an Investor's correct address. If another address is obtained, the Fund Administrator will then resend the Plan Notice and/or Distribution Payment to the Investor's new address within ten (10) days of receipt of the returned mail. If the Plan Notice and/or Distribution Payment is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find an Investor's correct address, the Fund Administrator, in his discretion, may remove such Investor from the distribution and the Investor's Distribution Payment will be added to the Residual described in paragraph 27 below.

Any Investor 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.

23. *Distribution Timing.* The Fund Administrator will use his best efforts to start the distribution within sixty (60) days of the Plan's approval.

24. *Disbursement of the Fair Fund.* Pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(6), the Fund Administrator will obtain an order from the Commission to disburse the Fair Fund. Pursuant to the order, the Commission's Office of Financial Management will transfer funds to the Third-Party for issuance of the Distribution Payments.

25. *Distribution Payments.* The Fund Administrator will make arrangement for and oversee the transfer of funds to the Third-Party who is responsible for depositing the funds in an account at a commercial bank not unacceptable to the Fund Administrator in order to issue Distribution Payments. All Distribution Payment 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 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. An investor's claim to payment is extinguished as of the stale date and the funds will remain in the Fair Fund. A check reissue request should be made within ninety (90) days from the original check issuance date as instructed in the mailing with the check.

All Distribution Payments shall 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 recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after ninety (90) days; and (d) the name of a person or entity to contact, if the Eligible Investor has any questions regarding the distribution. Any such communication shall be submitted to the Commission staff and the Tax Administrator for review and approval. The Distribution Payments, on their face, or the accompanying mailing 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 the Respondents' conduct described in the Orders. Simultaneously with the mailing of the distribution checks, the Fund Administrator will mail a letter to each Eligible Investor, indicating the Eligible Investor's Net Loss and Distribution Payment amounts and explaining how those two amounts were calculated.

26. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute the Net Available 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. Immaterial changes may be made by the Fund Administrator. For good cause shown, the Fund Administrator may extend any of the procedural deadlines set forth in the Plan.

27. *Procedures for Disputing Distribution Payments.* Disputes will be limited to questions regarding calculations of the Distribution Payments. Within thirty (30) days of the date of publication of the Plan, 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 Investor of his resolution of the dispute, which will be final.

28. *Disposition of Undistributed Funds.* A residual account within the Fair Fund will be established for any amounts remaining after the final disbursement to Eligible Investors from the Fair Fund (the "Residual"). The Residual may include the Reserve, distribution checks that have not been cashed, funds from checks that were not delivered or from funds returned to the Commission, Fair Fund tax refunds for overpayment or for waiver of IRS penalties. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission. Returning such money to Respondents would be inconsistent with the equitable principle that no person should profit from his own wrongdoing. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

29. *Accountings.* When all funds have been disbursed, except for the Residual described in paragraph 27 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 approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the Fund Administrator is a Commission employee, no interim accountings will be made.

30. *Termination of the Fair Fund.* Following the final disbursement from the Net Available Fair Fund to Eligible Investors, the Fund Administrator will make arrangement for the final payment of taxes, Tax Administrator fees and expenses, and other administrative expenses, and will submit a final accounting to the Commission. The Fair Fund will be eligible for termination after all of the following have occurred: (a) a final accounting, appearing on the standard accounting form supplied by the 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. Upon Commission approval of the final accounting, Commission staff will seek an order from the Commission authorizing: (a) transfer of the remaining residual amount, and any amounts returned to the Fair Fund in the future to the U.S. Treasury; (b) termination of the Fair Fund; and (c) discharge of the Fund Administrator.

V. Notice of Proposed Plan and Opportunity for Comment

31. *Notice for Comment.* The Notice of Proposed Plan of Distribution (the "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 from 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 (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Numbers 3-16753 and 3-16754" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.