

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-14191 and 3-14192

In the Matters of)
BNY Mellon Securities LLC)
and)
Mark Shaw)
Respondents.)

[PROPOSED] PLAN OF DISTRIBUTION

I. BACKGROUND

A. OVERVIEW

1. This Plan of Distribution (“Distribution Plan”) proposes a methodology for distribution to investors of \$24,045,447, plus accumulated interest, paid by BNY Mellon Securities LLC¹ (“Mellon Securities”) and \$368,591, plus accumulated interest (in total with the Mellon Securities amount, the “Distribution Amount”), paid by Mark Shaw (“Shaw”) in the settlement of separate but related administrative proceedings with the Securities and Exchange Commission (“Commission”).

¹ The assets of BNY Mellon Securities LLC were sold and in August 2009 its broker-dealer registrations from all states except New Jersey were withdrawn. Today, Mellon Securities exists only as a legal entity; it has no employees and no business operations. Limited to the purposes of this Plan, references to Mellon Securities shall include, where appropriate, The Bank of New York Mellon Corporation.

2. On January 14, 2011, the Commission entered an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions against Mellon Securities (the “Mellon Securities Order”). Mellon Securities consented to the entry of the Order without admitting or denying the Order’s findings. The Mellon Securities Order found that, from November 1999 through March 2008, Mellon Securities failed reasonably to supervise the order desk manager and traders on its institutional order desk.

3. Also on January 14, 2011, the Commission entered an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against Mark Shaw (the “Shaw Order”). Shaw consented to the entry of the Order without admitting or denying the Order’s findings. The Shaw Order found that, from November 1999 through March 31, 2008, Shaw manipulated time delays in systems for executing and reporting agency cross-trades on a regional exchange to advantage a handful of accounts held by individuals or hedge funds, at the expense of accounts belonging to various employee stock purchase plans, employee stock option plans, direct purchase and sale plans, and similar plans (collectively, the “Plan Customer(s)"); Shaw repeatedly deprived certain Plan Customers of best execution of their orders by using the ability to capture and freeze prices to chase better prices for the hedge funds and to execute trades at stale prices more favorable to the hedge funds than the prices prevailing in the market at the time of execution, which, in many

instances were outside the National Best Bid and Offer at the time of execution; and Shaw directed traders under his supervision to do the same.²

4. The Mellon Securities Order required, among other things, Mellon Securities to disgorge \$19,297,016 plus prejudgment interest of \$3,748,431, and to pay a civil penalty of \$1,000,000, for a total of \$24,045,447.³ Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, the Mellon Securities Order created a Fair Fund for the disgorgement, interest, and penalties to be paid by Mellon Securities (“Fair Fund”). The Shaw Order required, among other things, Shaw to disgorge \$195,300 plus prejudgment interest of \$23,291, and to pay a civil penalty of \$150,000 for a total of \$368,591.⁴ The Shaw Order states that such disgorgement, interest, and penalties may be distributed by the Fair Fund established in the Mellon Securities Order.⁵

B. CONTROL OF THE FAIR FUND

5. Pursuant to their respective Orders, on or about January 28, 2011, Mellon Securities paid a total of \$24,045,447 and Shaw paid a total of \$368,591 into the Fair Fund. The monies in the Fair Fund are currently on deposit with the U.S. Treasury. 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. The assets of the Fair Fund are subject to the

² See, In the Matter of Mark Shaw, Administrative Proceeding File No. 3-14192, Exchange Act Release No. 63725, January 14, 2011, paragraph 1.

³ In the Matter of BNY Mellon Securities LLC, Administrative Proceeding File No. 3-14191, Exchange Act Release No. 63724, January 14, 2011, section IV paragraph B.

⁴ In the Matter of Mark Shaw, Administrative Proceeding File No. 3-14192, Exchange Act Release No. 63725, January 14, 2011, section IV paragraph D.

⁵ In the Matter of Mark Shaw, Administrative Proceeding File No. 3-14192, Exchange Act Release No. 63725, January 14, 2011, section IV paragraph E.

continuing jurisdiction and control of the Commission. The Fair Fund will not receive additional funds, other than the accrued interest from the invested funds.

C. APPOINTMENT OF THE INDEPENDENT DISTRIBUTION CONSULTANT

6. The Mellon Securities Order also directs Mellon Securities to retain an Independent Distribution Consultant (“IDC”) not unacceptable to the Division of Enforcement to devise and submit a Distribution Plan, pursuant to Rule 1105 of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105 (“Rule 1105”), to distribute the Fair Fund to potentially affected investors. Mellon Securities has agreed to pay all fees and costs associated with the engagement of the IDC.

7. In accordance with the Mellon Securities Order, Mellon Securities has retained Alan Friedman as the IDC. Mr. Friedman is a Vice President of Charles River Associates, Inc. (“CRA”), a consulting firm. Mr. Friedman has experience serving as a distribution consultant and lead economic consultant to distribution consultants in several other Commission and regulatory matters.

8. Mellon Securities has agreed to cooperate fully with the IDC and shall provide the IDC with access to its files, books, records, and personnel as reasonably required to develop the Distribution Plan.

9. This Distribution Plan is designed to allocate the Fair Fund among Plan Customers affected by the cross-trades during the “Relevant Time Period,” that is, November 1, 1999 to March 31, 2008 (“Eligible Investors”).⁶

⁶ Accounts held for the benefit of Mellon Securities will not be considered eligible accounts and will be removed from the payment calculation process.

D. APPOINTMENT OF A FUND ADMINISTRATOR

10. The Mellon Securities Order provides that following Commission approval of the Distribution Plan and a Commission Order approving the final Distribution Plan, Mellon Securities shall require the IDC to take all necessary and appropriate steps to administer the final Distribution Plan.⁷ The IDC proposes that Boston Financial Data Services, Inc., an investor services firm experienced in the distribution and administration of Commission Fair Funds, serve as Fund Administrator (“Fund Administrator”).

11. In accordance with this Distribution Plan, and in coordination with, and under the direction of, the IDC, the Fund Administrator will be responsible for overseeing the administration of the Fair Fund; obtaining accurate mailing information for the Eligible Investors; preparing accountings; distributing money from the Fair Fund to the Plan Customers; and handling communications with the Plan Customers, among other things. The Fund Administrator may, with the approval of the IDC and Commission staff, utilize third parties, as necessary, to assist with the administration of the Distribution Plan.

12. The Fund Administrator will also provide customer support and communications services prior to and during the distribution. These services will include the establishment of a call center staffed by the Fund Administrator and an informational website available to the public (<http://www.bnymfairfund.com>). The Commission retains the right to review and approve any material posted to the website.

⁷ In the Matter of BNY Mellon Securities, Administrative Proceeding File No. 3-14191, Exchange Act Release No. 63724, January 14, 2011, page 8, paragraph 32.

13. Mellon Securities has agreed to pay all fees and costs associated with the engagement of the Fund Administrator.

14. Upon approval of the Distribution Plan, the Fund Administrator shall establish an account at Deutsche Bank Trust Company Americas (“Escrow Bank”) in the name of and bearing the Taxpayer Identification Number of the Fair Fund (“Escrow Account”) as custodian for the beneficiaries of the Distribution Plan. The name shall be in the following form: “BNY Mellon Securities Distribution Fund.” The Fund Administrator shall be the signatory on the Escrow Account, subject to the continuing jurisdiction and control of the Commission. Pursuant to Rule 1105(e), all fees and costs of the Escrow Bank will be paid by the Fair Fund.

15. Upon approval of the Distribution Plan by the Commission, the IDC and the Fund Administrator shall further establish, at the Escrow Bank, a controlled disbursement account in the name of and bearing the Taxpayer Identification Number of the Fair Fund (“Disbursement Account”). The Fund Administrator shall be the signatory on the Disbursement Account, subject to the continuing jurisdiction and control of the Commission.

16. The Escrow Bank shall hold Fair Fund assets during the check-cashing period and require use of “positive payment” controls before checks are honored. Once the Fair Fund assets are transferred from the U.S. Treasury to the Escrow Bank, they shall be placed in the Escrow Account and shall be invested and reinvested solely in instruments backed by the full faith and credit of the U.S. government of a type and term sufficient to meet the cash obligations of the Fair Fund, provided that any investment in short-term U.S. Treasury securities will not be made through repurchase agreements or

other derivative products. This shall be done pursuant to an escrow agreement with terms acceptable to the staff of the Commission. When checks are presented for payment by recipients of the distribution and validated by the Escrow Bank, the exact amount necessary to pay such presented checks shall be transferred from the Escrow Account into the Disbursement Account and validated presented checks shall be paid from the Disbursement Account. For any payments made by wire instruction, the exact amount necessary to pay such wires shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instruction provided to the Escrow Bank by the Fund Administrator.

17. Once the Fair Fund has been transferred from the U.S. Treasury to the Escrow Account, and within the first ten days of each quarter during which the distribution is being implemented, the Fund Administrator will file, pursuant to Rule 1105(f), an accounting with the Commission on a standardized accounting form provided by Commission staff, and will provide a final accounting for Commission approval prior to termination of the Fair Fund and the discharge of the IDC and the Fund Administrator.

18. The Escrow Bank maintains, and will maintain through the termination of the Fair Fund, a Financial Institutions (FI) Blanket Bond, including errors and omissions coverage. The financial strength of the primary insurers, as of the most recent renewal of the coverage, was rated "A++" and "A+," respectively by A.M. Best. The Escrow Bank will annually assess the adequacy of its policy limits. Documentation has been provided to Commission staff to support the foregoing representations.

19. The IDC proposes that the bond requirement be waived. A waiver of the requirement that a bond be posted pursuant to Rule 1105(c) is requested because (1) the Fund Administrator will have no custody, and only limited control, of the Fair Fund; (2) the distribution funds will be held by the U.S. Treasury until immediately before the transmittal of checks or electronic transfers to distributees; (3) upon transfer from the U.S. Treasury, the funds will be held in the Escrow Account, separate from Escrow Bank assets, until presentation of a check or electronic transfer, at which time funds will be transferred to the controlled Disbursement Account or payee bank; (4) presented checks will be subject to “positive pay” controls before being honored by the Escrow Bank; and (5) the Fund Administrator maintains adequate insurance coverage against loss. In lieu of bond, the Fund Administrator maintains, and will maintain until termination of the Fair Fund, a Financial Institutions Bond (including a Computer Crime Policy) and Errors and Omissions insurance. The financial strength of the primary insurers, as of the most recent renewal of coverage, was rated “A+” by A.M. Best. The Financial Institutions Bond provides protection against employee dishonesty, forgery, or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment, or delivery of funds as a result of fraudulent input, preparation, or modification of computer instructions, data, or fraudulent electronic transmissions or communications. The Errors and Omissions insurance protects against errors and omissions committed by employees in the course of their performance of professional services. The Fund Administrator’s professional liability insurance protects against errors and omissions committed by employees of the Fund Administrator in the course of their performance of professional services.

Documentation of coverage has been provided to Commission staff for review and that coverage has been deemed “not unacceptable.” Under the Plan, \$24,414,038 plus accumulated interest is the maximum amount that will be under the Fund Administrator’s limited control. Documentation has been provided to Commission staff to support the foregoing representations.

E. STANDARD OF CARE OF THE IDC AND FUND ADMINISTRATOR

20. The IDC, the Fund Administrator, and/or each of their designees, agents and assistants, shall be entitled to rely on any Orders issued in these proceedings by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person other than the Commission or the Fair Fund for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission was caused by such party’s gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Distribution Plan. This paragraph is an expression of the IDC’s and the Fund Administrator’s standard of care and is not intended as, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator, or their designees, agents, and assistants by the Commission or the Fair Fund, nor should this paragraph preclude the Commission or the Fair Fund from seeking redress from the IDC or the Fund Administrator.

F. APPOINTMENT OF A TAX ADMINISTRATOR

21. The Commission has appointed Damasco & Associates LLP as the Tax Administrator (“Tax Administrator”) of the Fair Fund.⁸ The IDC, Fund Administrator, and Mellon Securities will cooperate with the Tax Administrator in providing the information necessary to accomplish the income tax compliance, ruling, and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator will request the necessary funds from Commission staff to pay the tax liability of the Fair Fund. Taxes will be paid from the interest income accrued by the Fair Fund, and if the tax liability exceeds the interest income accrued by the Fair Fund, then the remainder of the tax liability will be paid from the corpus of the Fair Fund. The IDC shall require the Escrow Bank to provide duplicate statements for the Escrow and Distribution Accounts to the Tax Administrator.

22. The IDC, the Fund Administrator, and the Tax Administrator will not provide tax advice to any investors receiving distributions from the Fair Fund. Access to any guidance issued by the Internal Revenue Service regarding the distribution will be provided to investors along with the other relevant information. Pursuant to Rules 1105(d) and (e), all fees and costs of the Tax Administrator will be paid by the Fair Fund.

⁸ In the Matter of BNY Mellon Securities, Order Appointing Tax Administrator, Exchange Act of Release No. 63938, dated February 22, 2011; In the Matter of Mark Shaw, Order Appointing Tax Administrator, Exchange Act Release No. 63937, dated February 22, 2011.

II. DISTRIBUTION METHODOLOGY AND PROCEDURES

G. OBJECTIVE OF THE DISTRIBUTION PLAN

23. The Mellon Securities Order provides that the IDC shall develop a Distribution Plan to administer and distribute the Fair Fund “in a manner that compensates fairly and proportionately the Plan Customers for losses attributable to cross-trades conducted on their behalf by [Mellon Securities] from November 1999 through March 2008.”⁹ Eligible Investors will be considered for compensation if their trade was executed by the trading desk on the same day as a cross-trade in the same security or, where more sufficient data is unavailable, a range of days around the execution of each cross-trade. Eligible Investors have been identified on a best-efforts basis utilizing data provided by Mellon Securities. It should be noted, however, that complete customer information may not be available for the entire Relevant Time Period.

H. PAYMENT CALCULATION

24. The analysis described and undertaken in conjunction with this Distribution Plan applies only to the specific facts set forth in the Mellon Securities and Shaw Orders. Nothing herein should be construed as expressing any view regarding any other set of facts or matters that might come before the Commission.

25. The method of calculation of the payment to each Eligible Investor account from the Fair Fund is intended to result in a fair allocation of the Fair Fund. To accomplish this allocation, the relative impact of the cross-trades experienced by an Eligible Investor is estimated. In the view of the IDC, empirical analysis of the

⁹ In the Matter of BNY Mellon Securities, Administrative Proceeding File No. 3-14191, Exchange Act Release No. 63724, January 14, 2011, page 7, paragraph 29.

transactions at issue in this proceeding indicates that, for the specific facts set forth in the Mellon Securities and Shaw Orders, there is one component of impact suffered by Eligible Investors – the difference between a.) the price that could have been expected had the cross-trade received “best execution” (the “but-for price”);¹⁰ and b.) the price actually received. A fair and reasonable method for determining the impact caused by the trading described in the Mellon Securities and Shaw Orders is to calculate the difference in the actual price received and the estimated price that should have been expected but for the conduct described in the Mellon Securities and Shaw Orders’ findings. All parties that completed transactions in the same stock and on the same day as a cross-trade will generally be considered impacted by the cross-trade and will be eligible. However, if it can be reasonably determined that a particular account was not affected by a particular cross-trade, it will not receive payment for that trade.¹¹

26. Due to data availability, the above calculation was performed directly only for the period of February 15, 2007 through March 31, 2008 (the “in-sample period”). Utilizing the data from this in-sample period as a baseline, the IDC has employed the statistical technique of regression analysis to develop an Impact Estimation Algorithm,¹² for use over the time period of November 1, 1999 through February 14, 2007 (the “out-

¹⁰ The ‘but for’ price is estimated based upon the results in Albert Kyle and Anna Obizhaeva’s paper “Market Microstructure Invariants.” The formula for determining the estimated price takes into account the quote midpoint at the time the order was first available for trade, the size of the order, the volume of trading in the security traded in the 30 days preceding the day of the trade, and the volatility of the daily returns of the security.

¹¹ Examples of reasons for not including an account in the impact calculation relating to a particular cross-trade are: (1) an account’s trade was clearly not routed through the order desk, (2) the price received by an account was superior to the ‘but-for’ price and other accounts received a price on the same day for the same security which was equal to or worse than the ‘but-for’ price, and the estimated impact on those other accounts equaled or exceeded the estimated impact of the entire cross-trade.

¹² The Impact Estimation Algorithm is derived from regression analysis and is based upon publicly available information. The publicly available information includes opening security price, closing security price, daily volume weighted average price, daily trading volumes, number of buy and sell trades for the security, daily high and low transaction price of the security, opening bid-ask spread, and the beta of the security.

of-sample period”) to determine the estimated impact of each of the cross-trades that occurred in this out-of-sample period. This Impact Estimation Algorithm utilizes publically available trading data for each individual stock ticker, as well as the available data specific to each day’s cross-trading. For the in-sample period, the determination of impact due to the cross-trades will be based on the actual price received as compared to the but-for price. For the out-of-sample period, the calculation of impact due to cross-trades will be determined through the use of the Impact Estimation Algorithm.

27. The Mellon Securities Order contemplates that all of the monies contained in the Fair Fund, less any amount needed for tax and related expenses of the Tax Administrator and the Escrow Bank (“Net Distribution Amount”), will be distributed to investors. To achieve this result, the IDC has developed an Allocation Algorithm that, when applied as described below, will calculate the percentage share of the Fair Fund that should be distributed to each Eligible Investor. The Allocation Algorithm is based on the total impact computed for each individual Eligible Investor account in comparison to the total impact computed for all Eligible Investor accounts.

I. IMPLEMENTATION OF THE DISTRIBUTION PLAN

28. This Distribution Plan provides that the calculation of amounts to be distributed to Eligible Investors will be based on records obtained from Mellon Securities and, where Mellon Securities is unable to provide Plan Customer underlying investor information, based on records maintained by the custodians of omnibus accounts (“Omnibus Accounts”)¹³ that have information about the identity of account

¹³Examples of Omnibus Accounts include Plan Customers whose data no longer resides with BNY Mellon and Dividend Reinvestment Programs where the ultimate underlying shareholder is unknown (i.e. accounts held in “street name”).

shareholders. Accordingly, investors need not submit a claim in order to be considered for a distribution, and no claims procedure will be implemented.

29. For Omnibus Accounts the Fund Administrator will implement an outreach process in order to identify the underlying Eligible Investors.

30. No later than 30 days after Commission approval of the Distribution Plan, the Fund Administrator shall, subject to IDC supervision, contact any known Omnibus Account, whose beneficial account owner information is not available in Mellon Securities' records and which is estimated to be eligible for a distribution of \$25,000 or more. Each such Omnibus account will be provided with distribution options. These options are:

- a. To exercise commercially reasonable best efforts to provide all data necessary to allow the underlying accounts to be treated, for purposes of this Distribution Plan, as though they were transparent accounts held at Mellon Securities. The Fund Administrator shall request address information, and, if necessary, additional transaction information for all underlying shareholders of each Tier 1 Omnibus Account in order to implement the distribution process as described below.¹⁴ Because Omnibus account-holder information may be commercially sensitive, the data will be maintained by the Fund Administrator and the IDC subject to commercially reasonable assurances of confidentiality, and Mellon Securities will not have access to the data. At the discretion of the IDC,

¹⁴ The requested data will relate only to the first level of account-holders ("Tier 1"), that is, account-holders whose beneficial interest is apparent from the records of the intermediary. In cases where account-holders in omnibus accounts are themselves omnibus accounts or second level accounts ("Tier 2"), the Fund Administrator will not seek account-holder information relating to the beneficiaries of such omnibus accounts.

and upon approval by the Commission, Mellon Securities will reimburse these Omnibus Account holders for commercially reasonable expenses incurred in gathering and providing the necessary data.¹⁵ The IDC will request that the Omnibus Accounts provide underlying account information within 60 days from the date the Commission approves the Distribution Plan. The IDC will have the discretion to extend the response period, or discontinue the outreach, based upon the specific circumstances of the Omnibus Account.

b. In the event that an Omnibus Account cannot or will not provide the requested data, they will be required to select one of the following three options:

1) To distribute the proceeds to beneficiaries in the ratios that would be determined through the application of the Allocation Algorithm described in this Distribution Plan. Omnibus Accounts that elect this alternative will be provided with information sufficient to allow the coding of the necessary computer algorithm to estimate payment to each of its accounts. After completing this distribution the Omnibus Account will certify that it has elected this option and acted in compliance with the provision set forth in paragraph 30 b (1) of the

¹⁵ In considering whether expenses are “commercially reasonable,” the IDC shall consider all costs related to the gathering and utilizing of such data and the size of the distribution to be made, subject to the limitation that the amount of reimbursement to an Omnibus Account for the expense of obtaining this information will in no event approach or exceed the aggregate amount of the estimated distribution. The IDC does not expect these costs to be significant relative to the amount disbursed.

Distribution Plan. By electing this option, the Omnibus Account acknowledges that the sole recourse of the beneficial owners of its accounts, in the event of a dispute or complaint, is to the entity responsible for the Omnibus Account, and not to the Commission, IDC, CRA, Fund Administrator, or Mellon Securities; or

2) To receive the distribution of settlement proceeds at the time of distribution and subsequently apply any distribution technique that the Omnibus Account, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary or other legal obligations. After completing this distribution the Omnibus Account will certify that it has elected this option and acted in compliance with the provision set forth in paragraph 30 b (2) of the Distribution Plan. By electing this option, the Omnibus Account acknowledges that the beneficial owners' sole recourse in the event of a dispute or complaint is to the entity responsible for the Omnibus Account, and not to the Commission, IDC, CRA, Fund Administrator, or Mellon Securities; or

3) To request that settlement proceeds not be distributed. By electing this option, the Omnibus Account acknowledges that the beneficial owners' sole recourse in the event of a dispute or complaint is to the entity responsible for the Omnibus Account

and not to the Commission, IDC, CRA, Fund Administrator, or Mellon Securities.¹⁶

31. The Fund Administrator will maintain records of its efforts to obtain the cooperation of Omnibus Accounts and of the responses received through these efforts. The Fund Administrator will communicate the date by which data for the Omnibus Account must be provided, which will be consistent with the provisions within paragraph 30.a. Omnibus Accounts that are unresponsive or cannot supply the necessary data within the required time frame will, for the purpose of this Distribution Plan, be treated as direct accounts and will receive no further assistance from the IDC in connection with any distribution to underlying holders. The Fund Administrator will provide to Commission staff a listing of all Omnibus Accounts which are unresponsive or cannot supply the necessary data within the required time frame, prior to the preparation of the validated list of first round payees as described in paragraph 45.

32. The Fund Administrator will not contact any Omnibus Accounts that are estimated to receive a settlement distribution payment of less than \$25,000.

33. "Retirement Plan" as used in this Distribution Plan means an employee benefit plan, as such plans are defined in Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account ("IRA"), whether or not the plan is subject to Title I of ERISA. Under this Distribution Plan, IRA retirement plans are treated as direct accounts, and distributions to IRAs will be made in accordance with paragraphs 40 through 44 of this Plan.

¹⁶ In the event that an Omnibus or other account declines to accept payment prior to the distribution of payments, the payments to those accounts that refused acceptance will be set to zero and the payment amounts to the remaining accounts will be recalculated.

34. Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Distribution Plan requires the plan fiduciaries and intermediaries, as defined in Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006 (the “Field Assistance Bulletin”), of Retirement Plans to distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including, but not limited to, the Field Assistance Bulletin.

35. An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Distribution Plan among eligible Retirement Plans participating in an Omnibus Account administered by such intermediary according to the procedures set forth in paragraph 30 above or according to the average share or dollar balances of the Retirement Plans’ investment in the relevant securities during the Relevant Time Period, provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.

36. The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:

- a. Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in paragraph 30 b (1) above. The IDC will make this methodology available to Retirement Plan fiduciaries.
- b. Retirement Plan fiduciaries may allocate the distribution pro rata (based on total account balance) among the accounts of all persons who are

currently participants in the Retirement Plan (whether or not they are currently employees).

- c. Retirement Plan fiduciaries may allocate the distribution per capita among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- d. To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.

37. In view of alternative distribution methodologies available to Retirement Plans, among other things, plan fiduciaries and/or intermediaries will not be reimbursed the costs and expenses associated with administering the distribution received pursuant to this Distribution Plan.

38. The process of calculating the distributions to be made and causing those distributions to occur will be implemented according to the steps outlined herein.

39. For each cross-trade, the cross-trade impacts (either detrimental or beneficial)¹⁷ will be estimated. Impacts will be computed directly or by utilizing the Impact Estimation Algorithm discussed above, depending on the date of the customer trade.¹⁸ The estimated impact of each cross-trade will then be divided among the customer trades that took place in that same stock on that same day (or range of days if

¹⁷ The impacts of the cross-trades can be either beneficial or detrimental to Plan Customers depending on the relationship of the cross-trade execution prices to the 'but-for' price.

¹⁸ See paragraph 26 above.

appropriate), based on each customer's traded shares and transaction price. Trades that would not have been impacted by a particular cross-trade will be disregarded for this purpose.¹⁹ The impacts to each customer account will be summed over the entire Relevant Time Period to determine total estimated impact on each individual investor account. The total estimated impact for each individual investor account will then be aggregated for all investors, excluding any investors with beneficial total estimated impact,²⁰ to determine aggregate estimated impact. The relationship between the total estimated impact for each investor and the aggregate estimated impact will be used to compute the percentage of the impact which is represented by each individual customer account, or the "Payment Index".

40. The Payment Index for each non-zero account or "Eligible Account" will be applied to the Net Distribution Amount to determine the provisional payment amount for each account.

41. A *de minimis* distribution amount ("*de minimis* amount") for any single Eligible Investor account has been set at \$25.00, which was set by the IDC to be practicable and feasible given the costs associated with the distribution and the goal of achieving a high check cashing rate. This *de minimis* amount was found to be acceptable to Commission staff.

42. In order to attempt to maximize the amount distributed to Eligible Investors, the IDC foresees a two round distribution for the disbursement of the Fair Fund. The first round of distributions ("first round") will consist of all checks above the

¹⁹ See paragraph 25 above.

²⁰ An account with a positive impact is one which is, on balance, benefited by the cross-trades.

de minimis amount, and the second round of distributions (“second round”) will consist of *de minimis* checks and follow the process described in paragraph 51 below.

43. A database that contains all relevant Eligible Investors’ data will be compiled for the distribution the Fair Fund. The Eligible Investors database will include all information required to send a distribution check to each individual Eligible Investor.²¹ With the assistance of Mellon Securities, the database will be reviewed for accuracy, with the exception that Mellon Securities is not eligible to review data provided by Plan Omnibus Accounts.

44. The Fund Administrator will implement an address identification process for all accounts with a payment at or exceeding the *de minimis* amount, regardless of whether the account was originally a Mellon Securities account or an account whose information was provided by a cooperating Omnibus Account provider.

45. No later than 120 days after Commission approval of the Distribution Plan the IDC will submit a validated list of first round payees and the payment amounts to Commission staff, which will seek an Order from the Commission to disburse Fair Fund monies pursuant to Rule 1101(b)(6). The validation will state that the payment list was compiled in accordance with the Distribution Plan and provides all information necessary to make each disbursement to each distributee. Unless otherwise directed by the Commission, Commission staff will seek an Order directing disbursement that releases funds to the Escrow Account. The Fund Administrator will report to Commission staff within 30 days of the distribution mailing date whether the distribution has been accomplished.

²¹ The Eligible Investor Database will not include the actual payment amount due to the investor.

46. Payments from the Fair Fund to Eligible Investors will be in the form of a physical check or in some cases, subject to the approval of the IDC, a wire transfer. All original checks issued shall bear a stale date of 90 days from the date of issue. All distributions will be on terms providing that checks not cashed within 90 days after distribution shall be void, unless the deadline for cashing checks is extended by the IDC. The Escrow Bank shall be instructed to stop payment on checks exceeding the stale date or otherwise assure that payment on checks is prevented for checks not cashed within the deadline established by the IDC. The proceeds of stale and voided checks shall be treated as “undistributed” for the purposes of this Distribution Plan and processed pursuant to paragraph 51 below.

47. All payments shall be accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a link to the informational website, which will provide a description of tax information reporting and other related tax matters; (c) a statement that checks will be void after 90 days from the date of issue; and (d) a toll-free telephone number in the event of any questions regarding the distribution. Any such informational letter or other mailing to recipients characterizing their distributions shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a Fair Fund established by the SEC. The IDC, in his discretion, may utilize FedEx, and/or other equivalent mail services that require signature receipt, to distribute high-dollar value checks.

48. Returned mail and checks will be handled as follows:

- a. All checks returned by the United States Postal Service (“USPS”) for which a new forwarding address has been provided by the USPS will be voided, the current address updated in the Eligible Investors database, and a new check issued with a statement that it is void 45 days from the date of issue.. All checks returned by the USPS, for the first time, without a new forwarding address, will be coded on the Eligible Investors database as returned mail; the check will be voided; and the current address information will be forwarded to a nationally recognized address search service for address research. If a new address is found, that address will be updated to the Eligible Investors database and a new check will be issued. This new check will be issued with a statement that it is void 45 days from the date of issue. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered. However, in no case will the estimated additional costs of the distribution exceed the amount to be distributed. No check returned after 90 days from its initial issue date will be re-issued for payment.
- b. All checks returned by the USPS from a second attempt mailing for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to that new address. This new check will be issued with a stale date 45 days after its issuance of this new

check. The Eligible Investors database will be updated with the new address. No check returned after 90 days from its initial issue date will be re-issued for payment. Checks returned after the stale date will be marked void in the Eligible Investors database.

- c. All mail returned by the USPS from a second attempt mailing without a new forwarding address will be coded as returned mail and the checks will be voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered. However, in no case will the additional costs of the distribution exceed the amount to be distributed. No check returned after 90 days from its initial issue date will be re-issued for payment.

49. The IDC, in his discretion, may declare the implementation of the first round distribution complete after completing steps and procedures as described in paragraphs 46 through 48, however in no case prior to 120 days after initial check issuance. This 120-day period is deemed to include the 90-day period during which an initial check is valid plus a 30-day grace period.

50. As with first round distributions the IDC will submit a validated list of second round payees and the payment amounts to Commission staff, which will seek an Order from the Commission to disburse Fair Fund monies pursuant to Rule 1101(b)(6). The validation will state that the payment list was compiled in accordance with the Distribution Plan and provides all information necessary to make each disbursement to each distributee. Unless otherwise directed by the Commission,

Commission staff will seek an Order directing disbursement that releases funds to the Escrow Account. The Fund Administrator will report to Commission staff within 30 days of the distribution mailing date whether the distribution has been accomplished.

51. Upon completion of the first round distribution, and following Commission approval in accordance with paragraph 50, above, the IDC will direct the Fund Administrator to issue \$25.00 *de minimis* checks to Eligible Investors whose distribution payment in any earlier round would have been below the *de minimis* amount, starting with those with the largest calculated amounts (i.e., those just below the \$25.00 constraint) and continuing in descending order of net impact until the entire Fair Fund is disbursed.

52. Second round distribution checks will follow all steps and procedures as described in paragraphs 46 through 48.

53. The IDC, in his discretion, may declare the implementation of the second round distribution complete after completing all steps and procedures in paragraphs 46 through 48, however in no case prior to 120 days after initial check issuance. This 120-day period is deemed to include the 90-day period during which an initial check is valid plus a 30-day grace period.

54. Any checks which remain un-cashed after the closing of the second round distributions will remain in the Escrow Account and be handled as described in paragraph 57.

55. This Fair Fund is not being distributed according to a claims-made process, and therefore the procedures for making and approving claims are not applicable.

56. Disputes concerning claims relating to the amount distributed to an Eligible Investor must be made in writing to the Fund Administrator within 30 days of the check date. All other claims must be made in writing to the Fund Administrator within 60 days of the posting to the BNYM Fair Fund informational website that the second distribution has been made by the Fund Administrator (i.e., payments sent). All disputes may be accompanied by background materials, relevant information, or other data the Eligible Investor believes may support their claim. The IDC will review all disputes and make a determination. This determination is final and no appeals will be allowed. Any claims arising from disputes will be paid after the completion of the second round distribution as described in paragraph 53. Prior to any payment arising from claims, a validated list of recipients shall be provided to the Commission staff in accordance with paragraph 45 above. Such payments will be processed in a manner consistent with the procedures described in paragraphs 46 through 49 and shall be paid from the residual amount as described in paragraph 57 as approved by the Commission.

III. FUND MANAGEMENT AND TERMINATION

J. TERMINATION AND PROVISION FOR DISPOSITION OF UNDISTRIBUTED FUNDS

57. Monies in the Escrow Account that remain undistributed because of distributions to Eligible Investors that were not cashed or that were cashed and then returned by the recipient will be returned to the Commission.

58. The Fair Fund shall be eligible for termination, and the Fund Administrator appointed by the Commission shall be discharged, after all of the following have occurred: (1) a final accounting, in a standard accounting format provided by

Commission staff, having been submitted by the Fund Administrator for approval of, and having been approved by, the Commission, (2) all taxes, fees, and expenses having been paid, and (3) any undistributed monies or monies returned having been sent to and received by the Commission. When the Commission has approved the final accounting, Commission staff shall seek an Order from the Commission to transfer any amount remaining in the Fair Fund to the U.S. Treasury, terminate the Fair Fund, and discharge the IDC and the Fund Administrator.

K. AMENDMENT AND NOTICES

59. Notice of this Distribution Plan shall be published in the SEC Docket, on the Commission website [<http://www.sec.gov>], and on an informational website created for the distribution [<http://www.bnymfairfund.com>]. BNY Mellon's website will have a link on its website to the informational website. Any person or entity wishing to comment on the Distribution Plan must do so in writing by submitting their comments within thirty days of the date of the notice: (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F. Street, N.E., Washington, D. C. 20549-1090; (ii) by utilizing the Commission's Internet comment form [<http://www.sec.gov/litigation/admin.shtml>]; or (iii) by sending an e-mail to [rule-comments@sec.gov]. Comments submitted by e-mail or via the Commission's website should indicate the Administrative Proceeding File Numbers (Admin. Proc. File Nos. 3-14191 and 3-14192) in the subject line. Comments received will be available to the public. Commenters should submit only information they wish to make publicly available.

60. The IDC and Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Distribution Plan. The IDC will inform Commission staff of any changes needed in the Distribution Plan. Upon agreement with Commission staff, the IDC may implement immaterial changes to the Distribution Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of the IDC, the Fund Administrator, or upon the Commission's own motion. For good cause shown, Commission staff may extend any of the procedural dates set forth in this Distribution Plan.

61. This Distribution Plan is subject to approval by the Commission and the Commission retains jurisdiction over the implementation of the Distribution Plan.

Submitted by:

Alan Friedman
IDC for the Fair Fund

Submitted on January 24, 2013