

## **Exhibit A**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**EMANUEL L. SARRIS, SR. and**

**SARRIS FINANCIAL GROUP, INC.**

**Defendants.**

**Civil Action No.  
12-4272-TON**

**DISTRIBUTION PLAN**

1. The Securities and Exchange Commission (the “SEC”) submits this Distribution Plan (the “Plan”) to fairly and reasonably distribute civil penalties paid by Defendants Emanuel L. Sarris, Sr. (“Sarris”) and Sarris Financial Group, Inc. (“SFG”) (collectively, the “Defendants”) to investors harmed by the actions described in the Complaint.

2. The SEC incorporates by reference the background and history of this matter as set forth in the accompanying Memorandum in Support of its Motion for an Order Establishing a Fair Fund, Approving a Distribution Plan and Appointing a Distribution Agent (the “Memorandum”).

3. By Order entered December 22, 2017, this Court appointed Miller Kaplan Arase LLP as Tax Administrator for all funds under the Court’s jurisdiction in this case and authorized payment of tax related obligations, fees, and expenses from those funds without further Court Order. Dkt. No. 42.

**The Fair Fund**

4. The SEC currently holds approximately \$385,000 in an interest-bearing account at the U.S. Treasury’s Bureau of Fiscal Service (“BFS”), comprised of the \$380,000 civil penalty paid by the Defendants and accrued interest, less any Administrative Costs<sup>1</sup> paid to date. The Court has established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so that the funds held by BFS, less a reserve for Administrative Costs (the “Net Fair Fund”), can be distributed to Eligible Harmed Investors.

**The Distribution Agent**

5. Catherine E. Pappas, an SEC employee, will serve as Distribution Agent in connection with the Plan.

6. The Distribution Agent:

(a) shall receive no compensation for the services performed in administering the Fair Fund, other than her regular salary as an employee of the SEC;

(b) shall perform such functions as are necessary to implement and administer the Plan. In performing these functions, the Distribution Agent shall be deemed to be acting within the scope of her employment with the SEC. In carrying out her duties, the Distribution Agent may be assisted by other SEC staff acting under her supervision;

(c) shall coordinate with the Tax Administrator to ensure that the Fair Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations pertaining to QSFs, 26 C.F.R. §§ 1.468B-1 through 1.468B-5, complies with all related legal and regulatory requirements, including without limitation,

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<sup>1</sup> Capitalized terms not immediately defined are defined below.

satisfying any reporting or withholding requirements imposed on distributions from the Fair Fund; and

(d) with her designees, agents and assistants, shall not be required to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of willful disregard of duty.

### **Definitions**

7. The following definitions apply to the terms as used in the Plan:

(a) **Administrative Costs** are the costs and obligations associated with the Fair Fund and the Plan, including investment costs, taxes, and tax related fees and expenses. All Administrative Costs shall be paid out of the Fair Fund.

(b) **Distribution Payment** is the payment made to an Eligible Harmed Investor in accordance with the Plan.

(c) **De Minimis Amount** is \$20. No Distribution Payment shall be made under the Plan for less than the *De Minimis* Amount.

(d) **Eligible Harmed Investor** is any Harmed Investor who is determined eligible for a Distribution Payment under the methodology described in ¶¶ 8-9, below, and whose Distribution Payment equals or exceeds the *De Minimis* Amount.

(e) **Excluded Party(ies)** are (i) Unresponsive Investors; (ii) SFG, its agents, affiliates, assigns, subsidiaries, successors-in-interest, and any entity in which SFG has a controlling interest; (iii) Sarris, his spouse, agents, affiliates, heirs, assigns, household members, and successors-in-interest; (iv) an Investor whose Investment, in whole or in part, was funded by Sarris or SFG; and (v) any entity controlled by Sarris or SFG or in whose Investment Sarris or SFG had or has an interest.

(f) **Fair Fund** is the fund established by the Court, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, and is comprised of the \$380,000 civil penalty paid by the Defendants and accrued interest.

(g) **Harmed Investor** is an Investor who is not an Excluded Party and whose Recovery is less than their Investment.

(h) **Investment** refers to the aggregate out-of-pocket investment made by an Investor in the Kenzie Funds.<sup>2</sup> It does not include any interest, dividend, or paper profit.

(i) **Investor** refers to persons or entities that invested in the Kenzie Funds through the Defendants.

(j) **Investor Notice** is the notice that the SEC sent to the last known address of each Investor that, among other things, notified the Investor of the SEC's intent to move the Court to approve a Plan, informed Investors of the SEC's calculation of their Investment and Recovery, and provided to Investors an opportunity to object to the proposed Plan or the SEC's calculation of their Investment and Recovery.

(k) **Net Fair Fund** is the Fair Fund less Administrative Costs.

(l) **Recovery(ies)** is the aggregate amount of an Investment recovered by an Investor, whether through redemptions, periodic withdrawals, interest or dividend payments, distribution(s), or otherwise.

(m) **Recovery Ratio** is a calculation of each Harmed Investor's Recovery as a fraction of that Harmed Investor's Investment. Interim calculations of the Recovery Ratio will change until the Distribution Agent has identified all Eligible Harmed Investors and their Investments and Recoveries and has determined the Net Fair Fund.

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<sup>2</sup> As described in the Memorandum, the Kenzie Funds were private funds that purportedly traded in foreign currencies.

(n) **Stale Date** is the date on which Distribution Payment checks expire.

(o) **Tentative Distribution** is an interim-calculated distribution amount under ¶¶ 8-9 of the Plan.

(p) **Unresponsive Investor** is any Harmed Investor from whom information was sought in the Investor Notice and/or otherwise by the SEC, and/or the Distribution Agent or her agents, and who does not timely provide that information; and any Harmed Investor who the SEC and/or the Distribution Agent cannot locate through reasonable efforts. For purposes of the Plan, locating Harmed Investors through the use of commercial databases regularly available to the Division of Enforcement of the SEC, last known contact information, and the information provided in response to the Investor Notice constitutes “reasonable efforts.”

**Methodology for Identifying Eligible Harmed Investors  
and Determining Distribution Payments.**

8. The objective of the methodology described below is to distribute the Net Fair Fund so that Recoveries, as a fraction of Investments, is the same for all Eligible Harmed Investors.

9. The Distribution Agent will identify Eligible Harmed Investors, and the amount to be distributed to each Eligible Harmed Investor, in the following manner:

(a) The Distribution Agent will determine the amount of the Net Fair Fund;

(b) The Distribution Agent will create a list of Harmed Investors who are not Excluded Parties (the “Preliminary List”);

(c) Using the Preliminary List, the Distribution Agent will calculate the Recovery Ratio;

(d) For each Harmed Investor on the Preliminary List, the Distribution Agent will calculate the Harmed Investor's Tentative Distribution by multiplying the Recovery Ratio by the Harmed Investor's Investment, and subtract from that product the Harmed Investor's Recoveries;

(e) If for any Harmed Investor, the Tentative Distribution is less than the *De Minimis* Amount, the Harmed Investor will be removed from the Preliminary List, and steps (c) through (e) will be repeated until each remaining Harmed Investor's Tentative Distribution is equal to or greater than the *De Minimis* Amount. Each remaining Harmed Investor on the Preliminary List will be deemed an Eligible Harmed Investor and the calculated amount will be the Eligible Harmed Investor's Distribution Payment.

#### **Administration of the Fair Fund**

10. Prior to distributing any funds to located Eligible Harmed Investors, the Distribution Agent will reserve or pay, as appropriate, any unpaid Administrative Costs.

11. Investors who relocate after being contacted by the Distribution Agent must promptly provide to the Distribution Agent new contact information in order to be considered for eligibility, or remain eligible, for a distribution.

12. The Net Fair Fund will be distributed to Eligible Harmed Investors pursuant to the methodology described in ¶¶ 8-9, above. The Distribution Agent will make a payment to each Eligible Harmed Investor through BFS by electronically transferring funds through the Automated Clearing House or mailing a check to the payee. The Distribution Agent will compile the information, prepare a payment file, and verify the payment file's completeness and accuracy for submission to SEC staff who, without further Court Order, will make the disbursements through BFS. At or about the time that the Distribution Agent submits a payment

file to BFS, the Distribution Agent will prepare and send to the last known address of each Eligible Harmed Investor a communication from that includes, if and as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other related tax matters; and (c) the name of a person to contact with questions concerning the distribution. The communication will clearly indicate that the money is being distributed in connection with the captioned case.

13. Checks that are not negotiated prior to the Stale Date shall be voided, and the distribution amount returned to the Fair Fund for disposition in accordance with the Plan. Electronic payments will be made only to cash equivalent accounts (*e.g.*, checking or savings accounts). In an effort to reduce tax administration costs, except as provided in ¶¶14 and 17, no checks will be issued or reissued, or payments made to investors, after December 31, 2020.

14. If additional funds are collected or received subsequent to the initial distribution, and/or if funds remain in the Net Fair Fund after the initial distribution, the Distribution Agent in her sole discretion, and without further Order of the Court, will make an assessment as to whether it is feasible and justifiable to attempt to distribute the remaining funds (“Additional Distribution”). Any Additional Distribution will be made pursuant to the Plan except that only those Eligible Harmed Investors who cashed the checks issued in the immediately prior distribution or otherwise received the Distribution Payment shall be eligible to receive an Additional Payment.

**Final Accounting and Termination of the Fair Fund**

15. Upon completion of all distributions under the Plan and the payment of all Administrative Costs, the Distribution Agent will file a final accounting with the Court and seek, as appropriate, an Order: (a) terminating the Fair Fund, (b) directing the SEC to remit any

residual funds to the U.S. Treasury, and (c) discharging the Distribution Agent. Any funds remaining in the Fair Fund, and any that the Court or the SEC may collect thereafter in the captioned action, or that are returned to the Court or the SEC, shall be remitted to the U.S. Treasury subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 [15 U.S. Code § 78u-6(g)(3)]<sup>3</sup> unless the Court directs otherwise.

16. All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

17. The Distribution Agent may implement immaterial changes to this Plan to effectuate its general purposes

18. The Court reserves the right to amend the Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to the Plan.

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<sup>3</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or fair fund or otherwise distributed to victims plus investment income shall be deposited or credited into the SEC Investor Protection Fund.