

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**UNITED DEVELOPMENT FUNDING III, LP,
et al.,**

Defendants.

**Civil Action No.
3:18-CV-1735-L**

ORDER APPROVING A DISTRIBUTION PLAN

Before the court is Securities and Exchange Commission's Proposed Distribution Plan for the Distribution of the United Development Funding III, LP ("UDF") Fair Fund. The court having reviewed the Motion of Plaintiff Securities and Exchange Commission (the "SEC") for an Order to Show Cause relating to the SEC's proposed distribution plan for the distribution of the UDF Fair Fund (the "Plan"), the accompanying Memorandum in Support of Proposed Distribution Plan, and the Plan (Docs. 24 and 25);

AND the steps set forth in the Order to Show Cause (Doc. 26) relating to investor notice of the proposed distribution plan having been completed;

AND, pursuant to the Order to Show Cause, the SEC having filed a Notice informing the Court that no objections to the Plan have been submitted as of the date of that Notice, and that the Plan and the Order to Show Cause have been published in accordance with the Order to Show Cause;

AND having considered all arguments presented and for good cause shown;

It is hereby ordered that:

1. The Plan (Doc. 24-1, attached hereto) is hereby approved; and
2. The Plan shall govern the administration and distribution of the Fair Fund previously established by Order entered July 16, 2019 (Doc. 18).

Signed this 4th Day of October, 2021.



Sam A. Lindsay
United States District Judge

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(Proposed) Distribution Plan

Background

1. On July 3, 2018, the Securities and Exchange Commission (the “SEC”) filed this action against UDF III, UDF IV, Hollis Greenlaw (“Greenlaw”), Benjamin Wissink (“Wissink”), Theodore Etter (“Etter”), Cara Obert (“Obert”), and David Hanson (“Hanson”) (collectively, the “Defendants”). ECF No. 1. The SEC alleged, *inter alia*, that from at least January 2011 through December 2015, the UDF family of investment funds (“UDF”) used money from UDF IV to pay distributions to investors in UDF III and to pay down UDF III loans, without adequately disclosing to investors, among other things, the use of funds. ECF No. 1, ¶¶ 1, 33. According to the Complaint, UDF caused UDF III to pay its investors at least \$67 million of distributions using funds from UDF IV. ECF No. 1, ¶ 3. The SEC further alleged that this use of UDF IV funds to pay down UDF III loans and to make distributions to UDF III investors was not adequately disclosed in the annual reports on Forms 10-K filed by UDF III and UDF IV during that period. ECF No. 1, ¶ 33. The SEC alleged that the Defendants, variously, violated Sections 17(a)(2) and (3) of the Securities Act of 1933 and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 and Rules 12b-20, 13a-1, 13a-13, and 13a-14 thereunder.

2. The action has since been resolved against all of the defendants by final judgments entered by consent on July 31, 2018 (the “Final Judgments”). The Final Judgments ordered the individual defendants to pay, in the aggregate, \$8,275,000.00 in disgorgement, prejudgment interest, and civil penalties. ECF Nos. 10-15. The Defendants have paid in full.

3. By Order dated July 16, 2019 (the “TA Appointment Order”), this Court established the UDF Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. §7246(a)] so that the SEC could distribute the collected civil penalties with the

collected disgorgement and prejudgment interest. ECF No. 18. By the same Order, the Court appointed Miller Kaplan Arase LLP as Tax Administrator for the UDF Fair Fund and authorized the SEC staff to pay taxes and tax administrative costs and expenses from the UDF Fair Fund without further Court order. *Id.*

4. The UDF Fair Fund is currently valued over \$8.3 million and is held in an interest-bearing account at the U.S. Department of Treasury's Bureau of the Fiscal Service. Accrued interest, and any amounts directed to the UDF Fair Fund by administrative or Court order, or otherwise, will be added to the UDF Fair Fund.

5. By Order dated May 28, 2021 (the "DA Appointment Order"), this Court appointed Strategic Claims Services ("SCS") as Distribution Agent, and authorized the SEC to pay SCS's administrative fees and expenses from the UDF Fair Fund without further Court Order. ECF No. 23.

6. The SEC developed this distribution plan (the "Plan") jointly with the Distribution Agent and the Tax Administrator, in accordance with practices and procedures customary in Fair Fund administrations. The Plan governs the administration and distribution of the UDF Fair Fund, and sets forth the method and procedures for distributing the assets of the UDF Fair Fund to investors in UDF IV harmed by the conduct alleged in the Complaint.

Definitions

7. In addition to words otherwise defined herein, the following definitions apply to the Plan:

a. "Administrative Costs" means any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Distribution Agent, tax obligations, and investment costs. All Administrative Costs will be paid by the UDF Fair Fund.

b. "Class Action" shall refer to the private litigation captioned *In re United Development Funding IV Securities Litigation*, Master File Case No. 3:15-cv-04030-M (N.D. Tex.), representing the consolidation of Civil Action numbers 3:15-cv-04030-M, 3:15-04055-M, 3:16-cv-00456-M, and 4:16-cv-0188M.

c. "Distribution Payment" means the payment to an Eligible Investor in accordance with the Plan.

d. "Diversion" refers to the net amount of investor funds transferred from UDF IV to UDF III on each of the forty (40) dates listed in Exhibit A. Each date is treated as a separate Diversion.

e. "Eligible Investor" means a Potentially Eligible Investor who is not an Excluded Party and who is determined by the Distribution Agent to be eligible under the Plan for a Distribution Payment.

f. “Eligible Loss Amount” means, for each Potentially Eligible Investor, the aggregate of the Recognized Losses as defined and calculated in accordance with ¶¶ 19-25.

g. “Excluded Parties” shall mean the following entities or individuals:

- i) The defendants in the captioned action and their officers, directors, and trustees during the Relevant Period;
- ii) The legal representatives, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, successors-in-interest, affiliated entities, or controlled entities of any those included in (i) above;
- iii) The defendants in the Class Action and their legal representatives, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, successors-in-interest, affiliated entities, or controlled entities of the foregoing;
- iv) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent; and
- v) Any purchaser or assignee of another Person’s purported right to obtain a recovery from the UDF Fair Fund for value; provided, however, that this provision shall not be construed to exclude Third-Party Filers or those Persons who obtained such a right by gift, inheritance, devise or operation of law.

h. “Methodology” refers to the allocation method used in the Plan to determine eligibility and Distribution Payments as set forth in ¶¶ 19-25, herein.

i. “Net Available Fair Fund” means the UDF Fair Fund, plus accrued interest or earnings, less Administrative Costs.

j. “Opt-Out Investor” means an Investor who opted out of the Class Action. Opt-Out Investors may be eligible for a distribution under the Plan.

k. “Person” means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

l. “Potentially Eligible Investor” means any individual or entity, or their lawful successors, who held the Security during some or all of the Relevant Period.

m. “Prior Recovery” means the amount of compensation received by an Eligible Investor from any source for the loss of holding value in the Security due to Diversion.

Prior Recovery does not include compensation for losses resulting from the fluctuation of the price of the Security. To the extent the Distribution Agent knows an Eligible Investor's Prior Recovery, the Distribution Agent will reduce that Eligible Investor's Distribution Payment by the amount of their Prior Recovery. Aside from the application of ¶ 24 (Reasonable Interest), in no instance will an Eligible Investor receive a Distribution Payment that when combined with his, her, or its Prior Recovery, exceeds his, her, or its Eligible Loss Amount.

n. "Recognized Loss" shall mean, for each Potentially Eligible Investor, the amount of loss per Diversion date due to the Diversion on that date, as calculated pursuant to the Methodology.

o. The "Relevant Period" is January 1, 2011 through December 31, 2015, inclusive.

p. "Security" refers to limited partnership interests in UDF IV and the common stock of UDF IV that was traded on the Nasdaq Global Select Market under the symbol UDFI.

q. "Summary Notice" means the notice published in print or internet media pursuant to ¶ 26.f. below. Such notice (the text of which shall be approved by the staff of the SEC) shall include, at a minimum, a statement of the purpose of the UDF Fair Fund and the Plan, define the criteria for eligibility under the Plan; state that Potentially Eligible Investors will be identified based on information obtained by the Distribution Agent in connection with the Class Action and records obtained by the SEC, and not through a claims process; and identify the UDF Fair Fund website and provide contact information for the Distribution Agent.

The Distribution Agent

8. The Distribution Agent will be responsible for administering the UDF Fair Fund in accordance with the Plan and the DA Appointment Order.

9. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the SEC staff. If a change is deemed to be material by SEC staff, Court approval is required prior to implementation by amending the Plan.

10. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the SEC staff.

11. The Distribution Agent shall prepare and file, or provide to the SEC staff to file, reports in accordance with the DA Appointment Order.

12. The Distribution Agent is authorized to enter into agreements with institutions ("Institutions") as may be appropriate or necessary in the administration of the UDF Fair

Fund, provided such Institutions are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Plan. As set forth in the DA Appointment Order, the Distribution Agent will be entitled to payment from the UDF Fair Fund of reasonable fees and expenses incurred in the performance of its duties (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties).

13. The Distribution Agent will retain all materials submitted by Potentially Eligible Investors in paper and electronic form until the Court approves a final accounting (see ¶ 57); and all such material, as well as all other distribution records, in either form for a period of six (6) years from the date of approval of a final fund accounting to the Court, and will thereafter transfer the documents to the SEC if and as directed by the SEC staff. In addition, the Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the UDF Fair Fund six (6) months after the closing of the Escrow and Distribution Accounts (defined below, ¶¶ 33-34), or at such earlier time as the Distribution Agent determines with concurrence of the SEC staff.

14. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure compliance with applicable laws, rules, and regulations.

Tax Compliance

15. The UDF Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), as amended. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Regs. § 1.468B-1 to § 1.468B-5, as set forth in the TA Appointment Order.

16. Payment of tax obligations and tax related costs and expenses will be requested and made from the UDF Fair Fund in accordance with the TA Appointment Order.

No Claims Process

17. The UDF Fair Fund is not being distributed according to an independent claims process. Rather, because of the overlap between the Potentially Eligible Investors in this action and the defined class in the Class Action, the Distribution Agent, who is also the court-appointed claims administrator for the Class Action, will use the claims information obtained in the Class Action to identify Potentially Eligible Investors, supplemented by information obtained by the SEC from the Defendants and others (“Investor Records”).

18. Notwithstanding the preceding paragraph, the Distribution Agent will conduct additional outreach and make commercially reasonable efforts, as required, to obtain sufficient information to evaluate the eligibility of, and obtain necessary information from identified Potentially Eligible Investors, including the Opt-Out Investors, the filers of

untimely claims in the Class Action, and Potentially Eligible Investors identified from the Investor Records from whom supplementation is necessary.

Methodology

19. The methodology allocates the Net Available Fair Fund to investors who held the Security on a date when a Diversion occurred. Recognized Losses will be calculated as follows:

- a. For each Diversion on Exhibit A, the Distribution Agent will:
 - i) determine the number of shares of the Security each Potentially Eligible Investor held on the date when the Diversion occurred; and
 - ii) determine the average number of outstanding shares of the Security during each calendar quarter of the Relevant Period by averaging the number of outstanding shares of the Security at a) the beginning of the calendar quarter and b) the end of the calendar quarter. The number of outstanding shares will be obtained from the financial statements UDF IV filed with the SEC.
- b. A Potentially Eligible Investor's Recognized Loss will be, for each Diversion, the product of the Diversion and the number of shares held by the Potentially Eligible Investor on the date of the Diversion, divided by the average number of outstanding shares of the Security during the calendar quarter.

20. If an investment in the Security is gifted or distributed through an estate or otherwise, the recipient shall be eligible to participate in the distribution of the UDF Fair Fund to the extent, and in the amount, that the particular donor or decedent as the Potentially Eligible Investor would have been eligible under the Plan. The recipient and the donor may not both be eligible; if both the donor and the recipient claim to be eligible for a distribution under the Plan, only the recipient will be deemed eligible.

21. The Security is the only security eligible for recovery under the Plan (*see ¶ 7.p, "Security"*).

22. A Potentially Eligible Investor's Eligible Loss Amount shall be determined by aggregating that investor's Recognized Losses for all Diversions during the Relevant Period.

23. Aside from the application of ¶ 24 (*Reasonable Interest*), in no instance will an Eligible Investor receive a Distribution Payment that when combined with his, her, or its Prior Recovery, exceeds his, her, or its Eligible Loss Amount.

24. If the Net Available Fair Fund has sufficient funds, each Eligible Investor will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount. If the Net Available Fair Fund has funds in excess of that necessary to pay each Eligible

Investor a Distribution Payment equal to the amount of their Eligible Loss Amount, the Distribution Agent, in consultation with the SEC staff, may include in the Distribution Payments an additional amount to compensate each Eligible Investor for the time value of their respective Eligible Loss Amount (“Reasonable Interest”).¹ If the Net Available Fair Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Investors, then each Eligible Investor will receive a Distribution Payment equal to the Net Available Fair Fund multiplied by the ratio of their Eligible Loss Amount to the aggregate Eligible Loss Amounts of all Eligible Investors.

25. If an Eligible Investor’s Distribution Payment is less than \$10.00 (the “*De Minimis* Amount”), that Eligible Investor will not receive a Distribution Payment and the funds will be distributed to other Eligible Investors whose Distribution Payments are equal to or greater than \$10.00.

Notice to Investors

26. Within forty-five (45) days of Court approval of the Plan, the Distribution Agent shall:

- a. create a database of all Potentially Eligible Investors based upon information identified by the Distribution Agent;
- b. in furtherance of ¶ 18, design and submit to the SEC for review and approval, and mail to Potentially Eligible Investors from whom additional information is needed, a notice packet by which the Distribution Agent will seek additional information from those Potentially Eligible Investors. The notice packet will include a copy of the Summary Notice and will provide a response date by which the additional information must be received in order to be considered under the Plan;
- c. establish and maintain a website dedicated to the UDF Fair Fund. The UDF Fair Fund’s website, located at www.UDFFairFund.com, will make available in downloadable form the approved Plan and related materials, and such other information that the Distribution Agent believes will be beneficial to Potentially Eligible Investors;
- d. establish and maintain a traditional mailing address and an email mailing address which will be listed on all correspondence from the Distribution Agent to Potentially Eligible Investors as well as on the UDF Fair Fund’s website;

¹ “Reasonable Interest” will be calculated at the Federal short term rate plus three percentage points (see 26 U.S.C. § 6621(a)(2)), compounded quarterly from the approximate date of the loss through the approximate date of the disbursement of the UDF Fair Fund.

- e. establish and maintain a toll-free telephone number for Potentially Eligible Investors to call and speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear pre-recorded information about the UDF Fair Fund; and
- f. Publish the Summary Notice in the GlobeNewswire or PR Newswire.

27. The SEC staff retains the right to review and approve any material posted on the UDF Fair Fund's website, any material mailed, and any scripts used in connection with communication with Potentially Eligible Investors.

28. Before commencing any mailing, the Distribution Agent shall run a National Change of Address search to retrieve updated U.S. addresses for all Potentially Eligible Investors recorded in the database.

29. The Distribution Agent shall attempt to locate anyone to whom a mailing (including an email) has been returned as undeliverable. Subject to the time constraints herein, the Distribution Agent shall immediately re-mail any returned undelivered mail for which the Distribution Agent has obtained a forwarding or new address.

30. The Distribution Agent, with SEC staff approval, may engage a third-party search firm to conduct more rigorous searches for persons to whom a mailing is returned as undeliverable; any resulting fees and expenses will be an Administrative Cost. The Distribution Agent will utilize all means reasonably available, including LexisNexis and/or Experian and any available resources from the Class Action as permitted, to obtain updated addresses in response to undeliverable notices, and forward any returned mail for which an updated address is provided or obtained. The Distribution Agent will make available, upon request by the SEC staff, a list of all Potentially Eligible Investors for whom the Distribution Agent has been unable to locate current addresses.

Procedures for Distribution of the Net Available Fair Fund

31. The Distribution Agent, in consultation with the Tax Administrator and the SEC staff, shall determine the Net Available Fair Fund by retaining a prudent reserve to pay Administrative Costs. After all distributions and payment of all tax obligations, any remaining amounts in the reserve will become part of the residual described in ¶ 52.

32. Within one hundred eighty (180) days following the approval of the Plan, the Distribution Agent shall compile and send to the SEC staff the payee information, including the names, addresses, and Distribution Payments of all Eligible Investors ("Payee List"). The Payee List shall be accompanied by a Declaration from the Distribution Agent in a form acceptable to the SEC staff, representing, among other things, that a prudent reserve has been retained and that the Payee List: (a) was compiled in accordance with the Plan; (b) is accurate as to Eligible Investors' names, addresses, and Eligible Loss Amounts; and (c) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment for each Eligible Investor (the "Declaration").

33. Prior to the disbursement of the Net Available Fair Fund, the Distribution Agent will establish an escrow account (“Escrow Account”) with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. 208.43 and that is not unacceptable to the Commission staff (the “Bank”), pursuant to a form agreement provided by Commission staff (the “Escrow Agreement”).

34. The Distribution Agent, pursuant to the Escrow Agreement, shall establish with the Bank a deposit account (e.g. controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the FDIC up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

35. Upon the SEC staff’s receipt, review, and acceptance of the Payee List and the Declaration from the Distribution Agent, the SEC staff will seek an order from the Court to disburse funds to the Bank in accordance with the Payee List (the “Escrow Property”) and pursuant to the Escrow Agreement, for distribution by the Distribution Agent in accordance with the Plan. All disbursements will be made pursuant to Court order. Upon issuance of an order to disburse, the Commission staff will direct the transfer of funds to the Bank.

36. During the term of the Escrow Agreement, the Escrow Property shall be fully invested and reinvested by the Bank in short-term U.S. 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 Investors and tax obligations, including 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.

37. All interest, dividends, and/or income earned will accrue for the benefit of the UDF Fair Fund. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Distribution Agent, who may be reimbursed for said costs as provided in the Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

38. Within twenty (20) business days of the Bank’s transfer of the Escrow Property into the Escrow Account, the Distribution Agent shall use its best efforts to commence mailing Distribution Payment checks or effect electronic payments

39. In consultation with SEC staff, the Distribution Agent shall work with the Bank on an ongoing basis to deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum return, taking into account the safety and the tax implications of such deposits or investments; and to determine an allocation of funds between the Escrow and Distribution Accounts. The Distribution Agent shall provide duplicate bank and/or investment statements on any accounts established by the Distribution Agent to the Tax

Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

40. All checks issued to Eligible Investors by the Distribution Agent shall bear a stale date of one hundred twenty (120) days. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Investor's claim is extinguished as of the stale date and the funds will remain in the Net Available Fair Fund. If a check reissue has been requested before the stale date, such request is governed by the following section.

41. Subject to ¶ 42, Distribution Payments will be made directly to Eligible Investors and not to counsel or someone other than the Eligible Investor unless, at the discretion of the Distribution Agent, sufficient documentation has been provided by or with respect to the Eligible Investor to demonstrate that the full payment will be applied to the benefit of the Eligible Investor, and not to pay attorney fees or otherwise to benefit someone other than the Eligible Investor.

42. 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 Distribution Agent will issue 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. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potentially Eligible Investors, the Distribution Agent will endeavor to distribute funds directly to the beneficial account owner of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.

43. All Distribution Payments shall be preceded or accompanied by a communication that will include, as appropriate: (a) a statement characterizing the distribution and making clear that the distribution is from the captioned action and not from the Class Action; (b) a statement from the Tax Administrator regarding the tax consequences of Distribution Payments and informing Eligible Investors that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult their 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) providing contact information for the Distribution Agent, to be used in the event of any questions regarding the distribution. All such communications shall be submitted to the SEC staff and the Tax Administrator for review and approval. Distribution Payments on their face or the accompanying mailing shall clearly indicate that the money is being distributed from a UDF Fair Fund established by the Court for the benefit of investors for harm as a result of securities law violations.

Uncashed Checks and Reissues

44. The Distribution Agent will work with the Bank and maintain information about uncashed checks, returned payments, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible and for maintaining a record of such efforts. The Distribution Agent is also responsible for accounting for all payments. The amount of all uncashed or un-received payments will continue to be held in the UDF Fair Fund.

45. The Distribution Agent shall use its best efforts to make use of reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Investors whose checks are returned to the Distribution Agent as undeliverable by the USPS or whose electronic or otherwise issued payment was returned.

46. When new address information becomes available, the Distribution Agent shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than one hundred twenty (120) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent, despite best practicable efforts, is unable to find an Eligible Investor's correct address, the Distribution Agent, in its discretion, may remove such Eligible Investor from the distribution and the allocated Distribution Payment will remain in the Net Available Fair Fund for distribution, if practicable, to the remaining Eligible Investors.

47. When the Distribution Agent receives sufficient new or corrected payment information in connection with returned electronic or other non-check payments, the Distribution shall re-issue the payment based on the new information. If the Distribution Agent, despite best practicable efforts, is unable to find an Eligible Investor's correct address, the Distribution Agent, in its discretion, may remove such Eligible Investor from the distribution and the allocated Distribution Payment will remain in the Net Available Fair Fund for distribution, if practicable, to the remaining Eligible Investors.

48. At the discretion of the Distribution Agent, costs of reissue, such as bank fees offset upon the return of a payment, may reduce the Eligible Investor's Distribution Payment. In such situations, the Distribution will immediately notify the Tax Administrator of the reduction in Distribution Payment.

49. The Distribution Agent will re-issue new checks to Eligible Investors upon the receipt of a valid, written request from the Eligible Investors prior to the initial stale date. Such reissued checks will be void if not negotiated within sixty (60) days after issuance.

50. In cases where an Eligible Investor is unable to endorse a Distribution Payment (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Investor or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution

Agent. If, in the sole discretion of the Distribution Agent, such change is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.

51. The Distribution Agent will make reasonable efforts to contact Eligible Investors to follow-up on the status of uncashed Distribution Payments (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

Disposition of Remaining Funds after Distribution

52. A residual within the UDF Fair Fund (the “Residual”) will be established for any amounts remaining after all assets have been disbursed. The Residual may include, among other things, collections after the initial distribution, funds reserved for future Administrative Costs, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payments that were not delivered or accepted upon delivery, and tax refunds.

53. The Distribution Agent, in consultation with SEC staff, may distribute any residual funds on a *pro rata* basis to all Eligible Investors that negotiated the checks issued in the immediately preceding distribution or that received electronic payments, up to their Eligible Loss Amount plus Reasonable Interest (if applicable) and subject to the *De Minimis Amount*.

54. If, after the distribution is complete and all Administrative Costs have been paid, funds remain in the UDF Fair Fund, and the Distribution Agent, in consultation with the SEC staff, has determined further distributions to be infeasible, the Residual shall be transferred to the SEC, pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with Section 21(d)(7) of the Exchange Act [15 U.S.C. §78u(d)(7)],² *Liu v. SEC*, 140 S. Ct. 1936 (2020), and equitable principles. If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.³

² Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021.

³ 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 Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

UDF Fair Fund Reporting and Accounting

55. The Distribution Agent will provide quarterly reports in accordance with the DA Appointment Order, including, in consultation with the Tax Administrator, a final accounting and final report.

Termination of the UDF Fair Fund

56. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts will be transferred to the SEC and become part of the Residual.

57. Upon completion of the final report and accounting, the SEC staff will seek an Order from the Court, as appropriate, approving the final accounting; discharging the Distribution Agent; disposing of the Residual, and any amounts returned to the UDF Fair Fund in the future, and terminating the UDF Fair Fund.

58. The UDF Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:

- a. A final report and accounting has been submitted to and approved by the Court;
- b. All Administrative Costs have been paid; and
- c. The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Section 21(d)(7) of the Exchange Act 15 U.S.C. §78u(d)(7), and *Liu v. SEC*, 140 S. Ct. 1936 (2020), and equitable principles.

59. Once the UDF Fair Fund has been terminated, no additional payments will be made whatsoever.

Miscellaneous

60. The Court reserves the right to amend this Plan from time to time, and retains exclusive jurisdiction over all claims arising in connection with this Plan, including, but not limited to, claims against the Distribution Agent or Tax Administrator asserting liability for violation of any duty imposed by this Plan or other Court order.

61. The Distribution Agent and the Tax Administrator are entitled to rely on all outstanding rules of law and Court orders.

Att: Exhibit A

Exhibit A

#	Date of Diversion	Diversion
1	01/24/11	\$1,750,000
2	03/24/11	\$2,000,000
3	04/21/11	\$750,000
4	06/24/11	\$400,000
5	10/24/11	\$337,461
6	12/22/11	\$1,250,000
7	02/24/12	\$2,152,000
8	03/23/12	\$2,500,000
9	04/24/12	\$2,000,000
10	05/24/12	\$2,000,000
11	06/22/12	\$4,236,989
12	08/24/12	\$1,750,000
13	09/24/12	\$4,000,000
14	10/24/12	\$2,000,000
15	11/23/12	\$3,000,000
16	12/24/12	\$2,500,000
17	02/22/13	\$2,500,000
18	04/24/13	\$3,473,800
19	05/24/13	\$4,756,500
20	06/24/13	\$2,822,000
21	07/24/13	\$1,575,000
22	08/23/13	\$1,050,000
23	09/24/13	\$600,000
24	10/24/13	\$1,250,000
25	12/24/13	\$2,000,000
26	01/24/14	\$1,200,000
27	04/24/14	\$2,450,000
28	06/24/14	\$1,500,000
29	07/24/14	\$2,500,000
30	08/22/14	\$2,400,000
31	09/24/14	\$2,600,000
32	10/24/14	\$2,500,000
33	11/22/14	\$1,543,420
34	02/24/15	\$1,000,000
35	03/24/15	\$1,750,000
36	04/24/15	\$3,000,000
37	05/22/15	\$2,000,000
38	06/24/15	\$1,300,000
39	08/24/15	\$2,750,000
40	10/26/15	\$237,500
Total		\$81,384,670