

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT FLORIDA

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

WELLCARE HEALTH PLANS, INC., *et al.*

Defendants.

Case No. 8:09-cv-00910-VMC-JSS

DISTRIBUTION PLAN

I. Introduction

On May 18, 2009, the Commission filed a settled civil injunctive action against WellCare Health Plans, Inc. (“WellCare”). From at least November 2003 to October 2007, WellCare fraudulently retained over \$40 million it was required to return to Florida state agencies under programs that provided mental health services to Medicaid recipients and healthcare services to uninsured children. As a result, WellCare materially overstated its publicly reported net income and diluted earnings per share in periodic filings made with the Commission. Without admitting or denying the allegations in the Commission’s complaint, WellCare consented to the entry of a final judgment¹ for violations of the antifraud provisions of the federal securities laws² and the reporting provisions, record keeping and internal control provisions of the Exchange Act.³

¹ Dkt. No. 4.

² Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder; and Section 17(a) of the Securities Act of 1933 (“Securities Act”).

³ Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder; and Section 13(b)(2)(A) and 13(b)(2)(B) of the Securities Act.

WellCare also consented to pay \$1 in disgorgement and a \$10,000,000 civil penalty. WellCare paid the disgorgement of \$1 and penalty of \$10,000,000 in four installment payments concluding on May 5, 2010, to the Court Registry.

On August 13, 2019, the Court entered an Order creating a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7246(a)], as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246] (“Sarbanes-Oxley Act”), for the entire amount paid by WellCare, plus accrued interest, minus expenses incurred in establishing or maintaining the fund (the “Fair Fund”) and appointed Miller Kaplan Arase LLP as the Tax Administrator for the Fair Fund.⁴ On December 9, 2019, the Court appointed Kurtzman Carson Consultants, LLC (“KCC”) to serve as Distribution Agent of the Fair Fund.⁵

In a related matter, on April 17, 2017, the Court entered final judgments against Todd Farha (“Farha”), former Chief Executive Officer of WellCare, Paul Behrens (“Behrens”), former Chief Financial Officer of WellCare, and Thaddeus Bereday (“Bereday” and together with Wellcare, Farha, and Behrens, the “Defendants”).⁶ Farha and Behrens were charged with violating the antifraud provisions of the federal securities laws,⁷ the reporting provisions, record keeping and internal control provisions of the Exchange Act.⁸ and Section 304(a) of the Sarbanes-Oxley Act; and with aiding and abetting WellCare’s violations of the antifraud provisions of the federal securities laws⁹ and the reporting provisions, record keeping, and internal control provisions of the Exchange Act.¹⁰ Farha and Behrens each consented to the entry of final judgments, which were ordered by the Court. Per the final judgments, the Court ordered Behrens to pay \$4,500,000,

⁴ Dkt. No. 18.

⁵ Dkt. No. 21.

⁶ *SEC v. Farha*, 8:12-cv-00047 (M.D. Fla. 2012).

⁷ Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and Section 17(a) of the Securities Act.

⁸ Section 13(b)(5) of the Exchange Act and Rules 12b-20, 13b2-1, 13b2-2, and 13a-14 thereunder.

⁹ See supra note 2.

¹⁰ See supra note 3.

comprised of \$3,500,000 in disgorgement and \$1,000,000 in civil penalties to the Commission.¹¹ The Court ordered Farha to pay \$12,500,000, comprised of \$11,500,000 in disgorgement and \$1,000,000 in civil penalties to the Commission.¹² On August 3, 2017 and October 2, 2017, the Court issued orders of satisfaction of monetary provisions of order and judgment, confirming that Farha and Behrens paid \$12,500,000 and \$4,500,000 respectively to the Commission.

On September 28, 2017, Bereday, who served as the General Counsel of WellCare during the relevant period, consented to the entry of a final judgment. Bereday was charged with violating the antifraud provisions of the federal securities laws,¹³ the reporting provisions, record keeping and internal control provisions of the Exchange Act,¹⁴ and Section 304(a) of Sarbanes-Oxley Act; and aiding and abetting WellCare's violations of the antifraud provisions of the federal securities laws¹⁵ and the reporting provisions, record keeping, and internal control provisions of the Exchange Act.¹⁶ On May 1, 2018, the Court ordered Bereday to pay disgorgement of \$3,500,000 and a civil penalty of \$1,000,000.¹⁷ On or about May 15, 2018, Bereday paid \$4,500,000 to the Commission.

On June 5, 2020 the Court ordered the Commission to transfer the money paid by Farha, Behrens, and Bereday, together with the interest earned thereon, totaling approximately \$22,428,079.57 to the Fair Fund established in *Wellcare* for distribution to harmed investors.¹⁸

The balance of the Fair Fund is approximately \$32,053,529.66.¹⁹

II. Definitions

¹¹ *Farha*, Dkt. No. 30.

¹² *Farha*, Dkt. No. 29.

¹³ Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Section 17(a) of the Securities Act.

¹⁴ Section 13(b)(5) of the Exchange Act and Rules 13b2-1, 13b2-2, and 13a-14 thereunder.

¹⁵ *See supra* note 2.

¹⁶ *See supra* note 3.

¹⁷ *Farha*, Dkt. No. 39.

¹⁸ *Farha*, Dkt. No. 45.

¹⁹ \$10,049,223.98 is in the court registry and \$22,004,035.68 is held at the Commission.

As used herein, the following definitions shall apply:

1. “**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 Fair Fund.

2. “**Affiliate**” shall have the meaning set forth in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101(2).

3. “**Check-cashing Period**” means the one hundred twenty (120) days following the mailing of Distribution Payment checks to Eligible Claimants in accordance with this Distribution Plan.

4. “**Claim Deficiency Notice**” means the notice sent by the Distribution Agent to a Potential Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation, no Eligible Loss Amount, no purchases of the Eligible Security during the Relevant Period, etc.). The Claim Deficiency Notice shall advise the Potential Claimant of the reason or reasons for the deficiency and the opportunity to cure such deficiency. A Claim Deficiency Notice shall be provided no later than ninety (90) days after the Filing Deadline. Subject to certain extensions provided for in this Distribution Plan, the deadline to cure deficiencies shall be twenty (20) days from the date of the Claim Deficiency Notice.

5. “**Claim Form**” means the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this Distribution Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Potential Claimant's purchases and dispositions of the Eligible Security during the Relevant Period, and the tax identification number of the Potential Claimant.

6. “**Claims Bar Date**” means the date established in accordance with this Distribution Plan by which Claim Forms must be postmarked or submitted electronically in order to receive consideration under the Distribution Plan. Subject to certain extensions provided for in this Distribution Plan, the Claims Bar Date will be one hundred twenty (120) days from the Initial Mailing.

7. “**Claims Packet**” means the materials relevant to submitting a claim that may be provided to Potential Claimants known to the Distribution Agent or to those who obtain such materials through a website or other appropriate delivery mechanisms. These materials will include a copy of the Fair Fund Notice and a Claim Form (together with instructions for completion of the Claim Form).

8. “**Days**” means calendar days, unless specified otherwise herein.

9. “**De Minimis Amount**” means the minimum Distribution Payment amount of \$10.00. No Eligible Claimant shall receive a Distribution Payment unless the Distribution Payment calculated pursuant to the Plan of Allocation, attached as Exhibit A, is equal to or greater than \$10.00.

10. “**Distribution Agent**” means Kurtzman Carson Consultants, LLC, which has been appointed by the Court to administer and distribute the Fair Fund in accordance with this Distribution Plan and the Court’s Orders.

11. “**Distribution Payment**” means the payment to an Eligible Claimant in accordance with the terms of this Distribution Plan, less any Prior Recovery to the extent known by the Distribution Agent.

12. “**Distribution Plan**” means this Distribution Plan in the form approved by the Court.

13. **“Eligible Claimant”** means a Potential Claimant who purchased Eligible Security during the Relevant Period and who is determined by the Distribution Agent to be eligible for a Distribution Payment from the Fair Fund. An Eligible Claimant does not include an Excluded Party.

14. **“Excluded Party” means:**

- a. A defendant, its officers, directors, and employees during the Relevant Period, Affiliates, or controlled entities who served in such capacity during the Relevant Period, and their assigns, creditors, heirs, distributees, spouses, parents, and children;
- b. Any employee or former employee of Wellcare or any of its affiliates who have been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Complaint;
- c. Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in the Commission’s Complaint in this action or any related Commission action (or any of his or her Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities) unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Claim Form;
- d. The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent; or
- e. Any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided however, that this provision shall

not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law.

15. **“Eligible Loss Amount”** means for an Eligible Claimant the sum of Recognized Loss per Share, as calculated in the Plan of Allocation attached as Exhibit A, for all shares of the Eligible Security purchased or acquired during the Relevant Period.

16. **“Eligible Security”** means WellCare Health Plans, Inc. (“WCG”) common stock listed on a U.S. exchange and registered with the Commission.

17. **“Fair Fund”** means the fund created by the Court pursuant to the provisions of Sarbanes-Oxley Act for the benefit of investors harmed by the Wellcare’s conduct, comprised of monies paid by Wellcare, combined with funds paid by defendants in *Farha*, and any additions thereto as may be provided by Court order or agreement in related cases or otherwise.

18. **“Fair Fund Notice”** means a written notice from the Distribution Agent to Potential Claimants informing them of the Fair Fund and its eligibility requirements, and explaining how to submit a claim. The notice will be both mailed and published according to the schedule detailed herein.

19. **“Final Determination Notice”** means the Distribution Agent's written notice to each Potential Claimant who filed a Claim Form. The Final Determination Notice will set forth the Distribution Agent’s determination of the eligibility of the claim (eligible, partially eligible, or rejected). The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

20. **“Net Available Fair Fund”** means the Fair Fund, plus accumulated interest and earnings thereon, less all Administrative Costs of administering the Fair Fund and implementing the Distribution Plan.

21. “**Person**” means a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company, or governmental entity. All nouns, pronouns, and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.

22. “**Plan of Allocation**” shall mean the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is attached as Exhibit A.

23. “**Potential Claimants**” means those Persons, or their lawful successors or assigns, identified by the Distribution Agent as having possible claims to recover from the Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Fair Fund under this Distribution Plan.

24. “**Pro Rata Share**” is the ratio of the Eligible Claimant’s Eligible Loss Amount to the sum of Eligible Loss Amounts of all Eligible Claimants. If the sum of Eligible Loss Amounts of all Eligible Claimants exceeds the Net Available Fair Fund, then each Eligible Claimant shall be paid their Pro Rata Share of the Net Available Fair Fund.

25. “**Reasonable Interest**” is the compensation added to an Eligible Claimant’s Distribution Payment for the time value of money on the Eligible Loss Amount. If the Net Available Fair Fund has funds in excess of that necessary to pay all Eligible Claimants Distribution Payments equal to their Recognized Losses, the Distribution Agent, in consultation with the SEC staff, may award Reasonable Interest.

26. “**Relevant Period**” for the purposes of this Distribution Plan means the period of time commencing on August 11, 2004 and continuing through 10:59 a.m. Eastern Standard Time on October 24, 2007.

27. “**Summary Notice Publication**” means the notice published on an Internet-based newswire service. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement that the Fair Fund relates to purchases of WellCare Health Plans, Inc. common stock during the Relevant Period and the means of obtaining a Claims Packet.

III. The Distribution Agent

28. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Distribution Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Fair Fund in accordance with this Distribution Plan.

29. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Distribution Plan upon agreement with Commission staff. Material changes to this Distribution Plan may only be implemented by the Distribution Agent after consultation with, and consent of, Commission staff and approval by the Court.

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

31. The Distribution Agent is authorized to enter into agreements with institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

32. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

IV. Tax Compliance

33. The 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, including, but not limited to:

- a. Obtaining a taxpayer identification number;
- b. Submitting requests for funds from the Fair Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and
- c. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Fair Fund.

V. Administration of the Fair Fund

A. Identification of and Notice to Potential Claimants

34. The Distribution Agent shall oversee the administration of the claims, procedures, and distributions as provided in this Distribution Plan. The Distribution Agent shall review the claims of Potential Claimants and make determinations under the criteria established herein as to the eligibility of each Potential Claimant to recover monies and the amount of money to be distributed from the Fair Fund to each Eligible Claimant.

35. Within 45 days of Court approval of the Plan, the Distribution Agent shall:

- a. create a mailing and claim database of all Potential Claimants based upon information identified by the Distribution Agent;
- b. design and submit a Claims Packet, including a Fair Fund Notice and a Claim Form, to the Commission staff for review and approval;
- c. mail a Claims Packet to each Potential Claimant identified by the Distribution Agent and the Distribution Agent's list of banks, brokers, and other nominees in accordance with paragraph 39 below (the "Initial Mailing");
- d. establish and maintain a toll-free telephone number, (866)779-6546 for Potential Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours, 8:30 a.m. to 5:00 p.m., Eastern Standard Time, or, outside of such hours, to hear prerecorded information about the Fair Fund. The Distribution Agent will advise the Commission staff of the toll-free telephone number;

- e. establish and maintain a traditional mailing address and an email address to enable Potential Claimants to correspond with the Distribution Agent.
- f. establish and maintain a website devoted solely to the Fair Fund. The Fair Fund website, located at www.WellCareFairFund.com, will make available a copy of the Fair Fund Notice, the approved Distribution Plan, and provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions. The website will also include a copy of a Claim Form and related materials in downloadable form, and such other information covering process or substance that the Distribution Agent believes will be beneficial to Potential Claimants.

36. The Summary Notice Publication will be published in internet media acceptable to the Commission staff starting within 10 days of the Initial Mailing. The Summary Notice Publication will notify the public of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Claim Form by request or from the Fair Fund website, and provide instructions for submitting a claim.

37. Before commencing any mailing, the Distribution Agent will run a National Change of Address search to obtain updated addresses for all Potential Claimants recorded in the database.

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

39. The Distribution Agent will mail notices to the Distribution Agent’s list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process (“record holders”) that may have records of holders of the Eligible Security during the Relevant Period. The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Eligible Security:

- a. within seven (7) days of receipt of the Claims Packet, request from the Distribution Agent sufficient copies of the Claims Packet to forward to all such beneficial owners, and within seven (7) calendar days of receipt of those Claims Packets, forward them to all such beneficial owners so that beneficial owners may timely file a claim; and/or
- b. Within fourteen (14) days, provide the Distribution Agent a list of last known names and addresses for all beneficial owners for whom the record holders purchased Eligible Security during the Relevant Period in a timely manner so that the Distribution Agent can communicate with them directly.

40. Claims Packets will be available on the Fair Fund website to brokerages and other institutions that hold Eligible Security in “street name” for the benefit of their customers who are the beneficial owners of the securities. The Distribution Agent will promptly provide a Claims Packet to any Potential Claimant upon request prior to the Claims Bar Date.

41. The Distribution Agent will provide a copy of the Distribution Plan and Fair Fund Notice to the Commission staff who will post the Distribution Plan and Fair Fund Notice on the Information for Harmed Investors page of www.sec.gov and establish a link to the Fair Fund website.

42. The Distribution Agent will attempt to locate any Potential Claimant whose mailing is returned by the United States Postal Service (“USPS”) as “undeliverable” and will document all such efforts. The Distribution Agent will utilize all means reasonably available 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 Commission staff, a list of all Potential Claimants whose Claims Packet have been returned as “undeliverable” due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

43. The Distribution Agent, with the Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for persons whose Claims Packet is returned as undeliverable.

B. Claims Process

44. The Claims Bar Date will be clearly identified in all materials as the calendar date one hundred twenty (120) days from the Initial Mailing. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Potential Claimant's claim, together with all required supporting documentation postmarked on or before the Claims Bar Date. A Claim Form that is postmarked after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent after consultation with Commission staff.

45. The Distribution Agent will also provide Potential Claimants with the option to submit their claims electronically via the Fair Fund website. If using the web-based claim filing option, a Potential Claimant must submit their claim to the Distribution Agent by 11:59 p.m. Eastern Standard Time on the Claims Bar Date.

46. Claims containing (a) one hundred (100) or more transactions or (b) claims submitted by an intermediary on behalf of twenty (20) or more accounts must be submitted electronically using the format provided by the Distribution Agent. The electronic filing template will be made available on the Fair Fund website. Files that do not comply with the format provided by the Distribution Agent may be rejected.

47. The burden to ensure the Claim Form is properly and timely postmarked and to prove receipt of the claim by the Distribution Agent will be upon the Potential Claimant. A claim will not be deemed submitted unless the Potentially Eligible Claimant receives an "Acknowledgement Postcard" or an electronic acknowledgement from the Distribution Agent. The Acknowledgement Postcard or the electronic acknowledgment shall be the official acknowledgment that the Distribution Agent has received and will review the claim.

48. All claims and supporting representations necessary to determine a Potential Claimant's eligibility to receive a distribution from the Fair Fund must be verified by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Potential Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

49. The Distribution Agent will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing the claim data and supporting documentation (or the lack thereof), verifying the claim, and calculating each Potential Claimant's Eligible Loss Amount pursuant to the Plan of Allocation.

50. Each Potential Claimant will have the burden of proof to establish the validity and amount of his or her claim, and that they qualify as an Eligible Claimant. The Distribution Agent

will have the right to request, and the Potential Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

51. When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent in this matter. Files that do not comply with the template and format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim(s).

52. Each Third-Party Filer must establish the validity and amount of each claim in their submissions. Like all other Potential Claimants, Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of Eligible Security as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Potential Claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of Eligible Security (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Eligible Security on pertinent dates. Documentation generated by the Third-Party Filer, as well as affidavits in lieu of supporting documentation, will not be accepted unless, for good cause, the Distribution Agent determines it acceptable. The Distribution Agent will have the right to request, and the Third-Party Filer will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to

substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Distribution Agent will result in rejection of the affected claim(s). The determination of the Distribution Agent to reject a claim for insufficient documentation, as reflected on the Final Determination Notice, is final and within the discretion of the Distribution Agent.

53. Distribution Payments must be made by check or electronic payment payable to the Potential Claimant (beneficial account owner). The Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Subject to paragraph 56 below (ERISA Plans), any other payment arrangement must be discussed with the Distribution Agent in consultation with the Commission staff and must be authorized by the Potential Claimant. Compensation to the Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

54. If, after discussion with the Distribution Agent in consultation with the Commission, and authorization by the Potential Claimant(s), a Distribution Payment is to be made to a Third-Party Filer to distribute to the Potential Claimant(s), the Third-Party Filer will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management. The certification form will be available on the Fair Fund website and upon request from the Distribution Agent. All such Third-Party Filers must have an auditable mechanism available to the Distribution Agent and the Commission staff to confirm that each Potential Claimant, if determined an Eligible Claimant, received the Distribution Payment directed to them.

55. The receipt of Eligible Security by gift, inheritance, devise, or by operation of law will not be deemed to be a purchase of Eligible Security, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in the instrument of inheritance. However, the recipient of Eligible Security as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of this Distribution Plan. Only one claim may be submitted with regard to the same transactions in Eligible Security, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

56. 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 Potential Claimants, the Distribution Agent will endeavor to distribute funds directly to the beneficial accountholders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.

C. Deficiency and Claim Determination Processes

57. The Claim Deficiency Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (*e.g.*, failure to provide required

information or documentation). The Determination Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so.

58. Any Potential Claimant with a deficient claim will have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

59. The Distribution Agent will send a Final Determination Notice to all Potential Claimants who filed a claim. In the event the claim is denied, in whole or in part, the Final Determination Notice will state the reason for such denial. The Final Determination Notice will constitute the Distribution Agent's final ruling regarding the status of the claim.

60. The Distribution Agent may consider disputes of any nature presented by Potential Claimants, and will consult Commission staff as appropriate. The Distribution Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Distribution Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

61. The Potential Claimant has the burden of notifying the Distribution Agent of a change in his or her current address and other contact information, and of ensuring that such information is properly reflected in the Distribution Agent's records.

D. Third-Party Review

62. After the Distribution Agent has completed the process of analyzing the claims and determining claim amounts in accordance with the Plan, and prior to the distribution of any funds, the Distribution Agent will engage an independent, third-party firm, acceptable to Commission

staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims, and ensure accurate and comprehensive application of the Plan of Allocation. The Distribution Agent will communicate the results of the review to Commission staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the Commission staff to respond to questions concerning the review.

E. Establishment of the Escrow Account

63. Prior to disbursement of the Fair Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank (“Bank”), acceptable to Commission staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Fair Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Fair Fund as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: “QSF, *SEC v. WellCare, et al.*, EIN No. _____,” as custodian for the benefit of investors allocated a distribution pursuant to the Distribution Plan in *SEC v. WellCare*.

64. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants and tax obligations that may accrue.

This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in Money Market Mutual Funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the U.S. Government.

65. In consultation with the Commission staff, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Fair Fund.

66. Upon receipt of the monies from the Commission into the Escrow Account, the Distribution Agent will provide a signed receipt to the Commission staff within ten (10) business days.

67. Upon transfer from the Commission, all funds shall remain in the Escrow Account, separate from Bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All Fair Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before being honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

68. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

69. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments. For any electronic payment, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instructions provided to the Escrow Bank by the Distribution Agent. All wire transfers will be initiated by the Distribution Agent using a two-part check and balance system, whereby completion of a wire transfer will require authorization by two members of the Distribution Agent's senior staff.

70. The Distribution Agent will provide copies of the bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis, and will assist the Tax Administrator in obtaining any other statements, as necessary.

F. Distribution

71. The Net Available Fair Fund will be distributed to Eligible Claimants as provided under the terms of this Distribution Plan. An Eligible Claimant's Eligible Loss Amount, as determined in accordance with the Plan of Allocation in this Distribution Plan, will be used to determine the amount of their Distribution Payment.

72. The Distribution Agent will disburse the Net Available Fair Fund to all Eligible Claimants, in one or more tranches, once all Claim Forms have been processed and all Potential Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth herein. No distribution will be conducted without prior authorization by an order of the Court.

73. Within seventy-five (75) days following the date the Distribution Agent has mailed the Final Determination Notices, the Distribution Agent will prepare a list of all Eligible

Claimants, the Eligible Loss Amount, and the Distribution Payment of each Eligible Claimant (“Payment File”). This Payment File shall be accompanied by a Declaration from the Distribution Agent as to the completeness and accuracy of the Payment File. The Distribution Agent will also prepare the relevant materials to effect a distribution, including recommending an estimated distributable amount from the Net Available Fair Fund. The Distribution Agent and the Tax Administrator will work together to establish a prudent reserve to pay any federal, state or local taxes payable in connection with the Fair Fund.

74. After receipt and acceptance of the Payment File, the Commission staff will petition the Court for authority to disburse the necessary amount of the Net Available Fair Fund from the Commission to the Distribution Agent for distribution to Eligible Claimants pursuant to the Distribution Plan. In conjunction with any motion seeking approval of a distribution, the Payment File will, upon request, be made available to the Court under seal.

75. Following the Court’s approval of the Commission’s petition to distribute the Net Available Fair Fund to Eligible Claimants, the Distribution Agent will commence the distribution to Eligible Claimants as promptly as possible following the transfer of funds.

76. Should the total amount of the Eligible Loss Amounts of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. This formula will be the fraction of the Eligible Loss Amount of each Eligible Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds a *de minimis* amount of \$10.00.

77. The Distribution Agent in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payment amounts.

78. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of one hundred twenty (120) days from the date of issuance. Accordingly, checks that are not negotiated within this Check-cashing Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below. Where an Eligible Claimant's check is not negotiated within the Check-cashing Period and has been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Fair Fund.

79. Payments to Eligible Claimants will be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
 - b. A statement that checks will be void and cannot be reissued after one hundred twenty (120) days from the date the original check was issued;
 - c. A statement that reissued checks will expire on the later of one hundred twenty (120) days from the date of the original check or sixty (60) days from the date of the reissued check;
 - d. A statement that the tax treatment of the distribution is the responsibility of each Eligible Claimant and that the Eligible Claimant should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- and

- e. Contact information for the Distribution Agent for questions regarding the Distribution Payment.

80. Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of their investment in WCG. Any such communication, letter or other mailing to Eligible Claimants characterizing the distribution will be submitted to the Commission staff and the Tax Administrator for review and approval.

81. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to make Distribution Payments. Wire transfers will be initiated by the Distribution Agent using a two-party checks and balances system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff. Electronic or wire transfers will be executed in U.S. dollars.

G. Handling of Returned or Uncashed Checks and Reissues

82. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a replacement check be reissued after one hundred twenty (120) days from the date of original issuance.

83. The Distribution Agent will research and attempt to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address. The Distribution Agent will mail a reissued check to the updated address, subject to the time limits detailed herein.

84. In cases where an Eligible Claimant 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 Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent.

85. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed Distribution Payments over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

H. Disposition of Remaining Funds

86. A residual within the Distribution Fund (the “Residual”) will be established for any amounts remaining after all assets have been disbursed. The Residual may include, among other things, funds reserved for future taxes and for post-distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds.

87. The Distribution Agent, in consultation with Commission staff, may distribute any the Residual funds to (a) Eligible Claimants, if any, who filed claims with the Distribution Agent after the Claims Bar Date or who were late in curing a denied claim in accordance with the Distribution Plan and/or, if feasible, (b) on a *pro rata* basis to all Eligible Claimants that negotiated the checks issued in the immediately preceding distribution or that received electronic payments, up to their Eligible Loss Amount and subject to the *De Minimis* Amount.

88. If, after the distribution is complete and all Administrative Costs have been paid, funds remain in the Fair Fund, and the Distribution Agent, in consultation with the Commission

staff, has determined further distributions to be infeasible, the Residual shall be transferred to the Commission, pending a final accounting. Upon completion of the final accounting, the Commission 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 *SEC v. Liu*, No. 18-1501, 2020 WL 3405845 (U.S. June 22, 2020). If distribution of the Residual to investors is infeasible, the Commission 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.²⁰

I. Record Retention

89. The Distribution Agent will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. 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 Fair Fund six (6) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Distribution Agent determines with concurrence of the Commission staff.

J. Costs

90. All fees, costs and expenses of the Tax Administrator and Distribution Agent, including those incurred for any third-party professionals and service providers in the performance of their duties, will be paid from the Fair Fund, subject to the review and approval of the Court,

²⁰ 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 Commission in any judicial action brought by the Commission 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.

pursuant to their respective appointment orders. Any taxes on interest earned by the Fair Fund will be paid by the Fair Fund.

K. Fair Fund Reporting and Accounting

91. The Distribution Agent will provide to Commission staff, who will file with the Court, a quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and will provide additional reports and quarterly account statements within twenty (20) days after the end of every quarter thereafter as detailed below.

92. Once the money has been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Distribution Agent.

93. The status report and quarterly account statement will inform the Court and the Commission staff of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:

- a. The location of the account(s) comprising the Fair Fund; and
- b. An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.

94. The Distribution Agent will prepare a final report and final accounting, in a format to be provided by the Commission staff, when the Fair Fund administration is complete. In

compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. The Commission staff will file the final report and final accounting with the Court.

95. Commission staff, or other relevant party, shall provide the Distribution Agent with any and all account information relating to the Fair Fund that may be required to meet reporting obligations; including providing copies of any account statements that the Distribution Agent may request.

L. Termination of the Fair Fund

96. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts will be transferred to the Commission.

97. The Commission staff will seek an order from the Court, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

98. The 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 Commission staff's recommendation as to the final disposition of the Residual consistent with *SEC v. Liu*, No. 18-1501, 2020 WL 3405845 (U.S. June 22, 2020).

99. Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

M. Limitation of Liability

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

101. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Distribution Plan and all Potential Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Distribution Plan.

102. The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other than the Distribution Agent), including, without limitation, WellCare and WellCare's past or present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.

EXHIBIT

A

Plan of Allocation

This Plan of Allocation is designed to compensate Eligible Claimants based on their losses on shares of the WellCare common stock purchased during the Relevant Period due to the misconduct of the Respondents. Investors who did not purchase shares of the Eligible Security during the Relevant Period did not purchase shares at prices inflated by the Respondents' violative conduct and are ineligible to recover under this plan.

Recognized Loss per Share on a share will be calculated as follows.

For shares of the Eligible Security that were purchased on or after August 11, 2004 through 10:59 am Eastern Standard Time on October 24, 2007, and

- a. Sold on or before 10:59 am Eastern Standard Time on October 24, 2007, the Recognized Loss shall be \$0.00.
- b. Sold between October 25, 2007 and November 7, 2007, the Recognized Loss shall be the purchase price *minus* the average closing price of WellCare common stock between October 25, 2007 and the date of sale, as shown in Table 1.
- c. Retained or sold after November 7, 2007, the Recognized Loss shall be the lesser of *i*) \$86.08, or *ii*) the purchase price *minus* \$31.75, the closing price on November 7, 2007.

For purposes calculating Recognized Loss per Share, purchases of Wellcare common stock on October 24, 2007 at a price of \$114.00 or greater will be deemed to have been made on or before 10:59 a.m. Eastern Standard Time, and all purchases of Wellcare common stock on October 24, 2007 at a price of less than \$114.00 will be deemed to have been made after 10:59 a.m. Eastern Standard Time.

Table 1: Closing Price of WellCare Common Stock October 25 - November 7, 2007		
Date	Closing Price	Average Closing Price since 10/25/2007
10/25/2007	\$42.67	\$42.67
10/26/2007	\$31.36	\$37.01
10/29/2007	\$28.62	\$34.22
10/30/2007	\$22.04	\$31.17
10/31/2007	\$24.19	\$29.78
11/1/2007	\$22.87	\$28.63
11/2/2007	\$27.37	\$28.45
11/5/2007	\$33.30	\$29.05
11/6/2007	\$35.54	\$29.77
11/7/2007	\$31.75	\$29.97

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

If the Recognized Loss per Share calculates to a negative number, reflecting a gain, the Recognized Loss per Share on such shares will be \$0.00.

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

Acquisitions: The receipt or grant of the Eligible Security to the investor by gift, devise, inheritance, or operation during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Such shares will be excluded from the calculation of the investor’s Eligible Loss Amount.

Options and Derivatives: With respect to purchases or sales of Eligible Securities through the exercise of an option, the purchase/sale date is the exercise date of the call and the assignment date of the put, and the purchase/sale price is the strike price of the call at the time of exercise and strike price of the put at the time of assignment. Otherwise, transactions during the Relevant Period that are pursuant to, or in connection with, a swap, or other derivative, will not be eligible for a recovery.

Short Sales: If the sale date for a share falls before the purchase date, then the share has a Recognized Loss of \$0.00. The date of covering a short sale is deemed to be the date of purchase of the Eligible Security and the date of a short sale is deemed to be the date of sale of the Eligible Security. If the investor has a short position as of the start of the Relevant Period, the earliest Relevant Period purchases will be matched against such short position, and not be entitled to a recovery, until that short position is fully covered.

Eligible Loss Amount: An investor’s Eligible Loss Amount will be the sum of the Recognized Loss per Share, as defined above, on all shares of the Eligible Security purchased or acquired by the investor during the Relevant Period.

Market Loss Limitation: If an investor’s actual market loss incurred on shares of the Eligible Security purchased during the Relevant Period are less than his, her, or its Eligible Loss Amount, then the investor’s Eligible Loss Amount shall be limited to the actual market loss amount. If the actual market loss calculates to a gain, then the investor’s Eligible Loss Amount will be \$0.00. The actual market loss will be calculated as: (a) the total purchase amount for shares of the Eligible Security purchased during the Relevant Period less (b) the sales proceeds of any of those

shares sold through November 7, 2007¹, and (c) the holding value of those remaining shares, which for the purposes of this calculation is \$31.75 per share, the closing price on November 7, 2007.

Pro Rata Distribution: If the Net Available Fair Fund equals or exceeds the sum of the Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount. If the Net Available Fair Fund is less than the sum of the Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant will receive a Distribution Payment equal to the Net Available Fair Fund multiplied by the ratio of his, her, or its Eligible Loss Amount divided by the sum the of the Eligible Loss Amounts of all Eligible Claimants (which ratio is the Eligible Claimant's "*Pro Rata Share*"). In no instance will an Eligible Claimant receive a Distribution Payment that when combined with his, her, or its Prior Recovery exceeds his, her or its Eligible Loss Amount. Reasonable Interest, if awarded, may be added to such Distribution Payment.

Minimum Distribution Amount: If an Eligible Claimant's calculated Distribution Payment is less than \$10.00, then the investor will not receive a payment, and the funds will be distributed to other Eligible Claimants with Distribution Payments greater than \$10.00.

¹ Sales of the Eligible Security during the Relevant Period will be matched first against the opening position and the proceeds of such sales will not be considered for purposes of calculating market gains or losses.