

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21585

In the Matter of

Impact Theory, LLC,

Respondent.

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PLAN OF DISTRIBUTION

I. OVERVIEW

1. The Division of Enforcement has submitted this Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Impact Theory, LLC (the “Respondent”) in the above-captioned matter.¹

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondent’s conduct described in the Order in connection with Respondent’s sale of unregistered crypto assets known as Founder’s Keys (the “Securities”). As calculated using the methodology detailed in the Plan of Allocation attached as Exhibit A, investors will be compensated for their losses on the purchase and acquisition of the unregistered Securities in an offering by Impact Theory and on the secondary market from October 13, 2021, through August 27, 2023, both dates inclusive (the “Relevant Period”). In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

3. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan has been approved by the Commission, and the Commission retains jurisdiction over its implementation.

II. BACKGROUND

4. On August 28, 2023, the Commission issued the Order instituting and simultaneously settling administrative proceedings against the Respondent. In the Order, the Commission found that from October 13, 2021, to December 6, 2021, Impact Theory, a media and entertainment

¹ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 11226 (Aug. 28, 2023) (the “Order”).

company, offered and sold crypto asset securities known as Founder's Keys in the form of purported non-fungible tokens, raising approximately \$29.9 million worth of ether from at least hundreds of investors, including investors across the United States. The Commission found that Impact Theory violated Sections 5(a) and 5(c) of the Securities Act by offering and selling these securities without having a registration statement filed or in effect with the Commission or qualifying for an exemption from registration. The Commission ordered the Respondent to pay \$5,120,718.27 in disgorgement, \$483,195.90 in prejudgment interest, and a civil money penalty of \$500,000.00, for a total of \$6,103,914.17, to the Commission. The Commission also created the Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 so the penalty paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

5. The Respondent has paid in full. The Fair Fund has been deposited in a Commission-designated account at the United States Department of the Treasury, and any accrued interest will be added to the Fair Fund.

III. DEFINITIONS

As used in this Plan, the following definitions will apply:

6. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Fund Administrator, tax obligations, bond premium expenses, and investment and banking costs.

7. **“Claim Form”** means the form designed by the Fund Administrator, in consultation with the Commission staff, for the filing of claims in accordance with this Plan. The Claim Form will require, among other things, sufficient documentation reflecting any Preliminary Claimant's purchases of the Security during the Relevant Period, disposition(s) of the Security, and wallet ownership, such that eligibility under the Plan can be determined; tax identification and other related information from the Preliminary Claimant as determined necessary by the Fund Administrator in coordination with the Tax Administrator; and a certification that the Preliminary Claimant is not an Excluded Party. The Claim Form or the accompanying directions will alert Preliminary Claimants of the OFAC and wallet screening provisions of the Plan, as set forth in paragraphs 63-65 below.

8. **“Claim Status Notice”** means the notice sent by the Fund Administrator within 120 days of the Claims Bar Date to any Preliminary Claimant that submitted a deficient Claim Form. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is denied, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Fund Administrator and provide instructions regarding what is required to do so.

9. **“Claims Bar Date”** means the date established in accordance with this Plan by which a Preliminary Claimant's Claim Form must be postmarked or submitted electronically in order to receive consideration under the Plan. The Claims Bar Date shall be 180 days after the initial mailing of the Plan Notice. Claim Forms submitted by Preliminary Claimants postmarked or received after the Claims Bar Date will not be accepted unless the Fund Administrator is directed to do so by the Commission staff.

10. **“Claims Packet”** means the materials relevant to submitting a claim that will be provided to Preliminary Claimants who request such materials through a website or otherwise prior to the Claims Bar Date. The Claims Packet will include, at a minimum, a copy of the Plan Notice and a Claim Form together with instructions for completion of the Claim Form.

11. **“Determination Notice”** shall mean the written notice sent by the Fund Administrator to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Fund Administrator’s final ruling regarding the eligibility status of the claim.

12. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

13. **“Eligible Claimant”** means a Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation.

14. **“Excluded Party”** shall mean:

- (a) The Respondent;
- (b) Present or former officers or directors of Respondent or any assigns, creditors, heirs, distributees, spouses, parents, dependent children, or controlled entities of any of the foregoing Persons or entities;
- (c) Any employee or former employee of the Respondent or any of its affiliates who has been terminated for cause or has otherwise resigned in connection with the conduct described in the Order;
- (d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct described in the Order or any related Commission action;
- (e) Any firm, trust, corporation, officer, or other entity in which Respondent has or had a controlling interest;
- (f) The Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as the Fund Administrator;
- (g) 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, or devise; or
- (h) Any person who is confirmed by the Fund Administrator through Wallet screening or otherwise, to be subject to sanctions as set in paragraphs 63-65 below.

The Claim Form will require claimants to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Fair Fund.

15. **“Fair Fund”** means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondent’s violations described in the Order.

16. **“Net Available Fair Fund”** means the Fair Fund balance, plus any interest or earnings, less Administrative Costs.

17. **“Payee”** means an Eligible Claimant whose Recognized Loss calculates, in accordance with the Plan of Allocation, to a distribution amount equal to or greater than \$20.00 who will receive a Distribution Payment.

18. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

19. **“Plan Notice”** means a written notice from the Fund Administrator to Preliminary Claimants informing them of the Fair Fund; the Plan and its eligibility requirements; explaining how to submit a claim, including instructions for any online claims process; and how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund’s website. The Plan Notice will also be available on the Fair Fund’s website that is maintained by the Fund Administrator.

20. **“Plan of Allocation”** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

21. **“Preliminary Claimant”** shall mean a Person, or their lawful successors, identified by the Fund Administrator as having a possible claim to recover from the Fair Fund under this Plan, or a Person asserting prior to the Claims Bar Date that he, she, or it has a possible claim to recover from the Fair Fund under this Plan as a result of transactions in the Securities during the Relevant Period.

22. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

23. **“Relevant Period”** means the time period from October 13, 2021, through August 27, 2023, both dates inclusive.

24. **“Securities”** refers to the unregistered crypto assets known as Founder’s Keys offered by Impact Theory and sold on the secondary market during the Relevant Period.

25. **“Summary Notice”** means the notice published in print or internet media that shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Claims Bar Date. The Summary Notice will be published three times and will appear within 10 days of the initial mailing of the Plan Notice.

26. **“Third-Party Filer”** means a third party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a

claim(s) on behalf of one or more Preliminary Claimants. Third-Party Filer does not include assignees or purchasers of claims that are excluded from receiving Distribution Payments under paragraph 14 above.

27. **“Wallet Screening”** is the review of wallets and blockchain transactions further described below, paragraphs 64-65.

IV. TAX COMPLIANCE

28. On January 5, 2024, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.² The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its 2022-2024 Engagement Letter Agreement with the Commission.³

29. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations 26 C.F.R. §§ 1.468B-1 through 1.468B-5. 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. Reg. § 1.468B-2, including but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Fair Fund.

30. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

V. FUND ADMINISTRATOR

31. On September 16, 2024, the Commission appointed Simpluris, Inc., as the fund administrator for the Fair Fund (the “Fund Administrator”), and the Fund Administrator has obtained a bond in the amount of \$6,103,914.17, as ordered.⁴ Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

32. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify and contact Preliminary Claimants; obtaining mailing and/or other contact information for Preliminary Claimants; establishing a website, a portal for secure communications to and from

² See Order Appointing Tax Administrator, Exchange Act Rel. No. 99278 (Jan. 5, 2024).

³ See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

⁴ See Order Appointing Fund Administrator, Setting Administrator’s Bond Amount, and Authorizing the Approval and Payment of Fees and Expenses of Administration, Exchange Act Rel. No. 101028 (Sept. 16, 2024).

Preliminary Claimants, and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (“FATCA”); advising Preliminary 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 Preliminary Claimant’s eligibility; advising Preliminary Claimants of final claim determinations; implementing Wallet Screening; ensuring compliance with any restrictions on making Distribution Payments in accordance with sanctions imposed by the United States government, including those administered by the U.S. Treasury’s Office of Foreign Asset Control (OFAC) and Financial Crimes Enforcement Network (“FinCEN”); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

33. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

34. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown if agreed upon by the Commission staff.

35. The Fund Administrator is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Fair Fund. In connection with such agreements, the third parties shall be deemed to be agents of the Fund Administrator under this Plan.

36. The Fund Administrator will be entitled to payment from the Fair Fund of reasonable fees and expenses—including reimbursement of the bond premium and any fees and expenses incurred by agents, consultants or third parties retained by the Fund Administrator in furtherance of its duties—incurred in the performance of its duties.

VI. ADMINISTRATION OF THE FAIR FUND

Identification of and Notification to Preliminary Claimants

37. The Fund Administrator will use its best efforts to identify Preliminary Claimants from a review of trading records, obtaining records from registered broker-dealers and investment advisors, and seeking information from any other source available to it. The Fund Administrator may also engage a third-party firm, after consultation with and approval of the Commission staff, to assist in identifying Preliminary Claimants to maximize the participation rate in the Fair Fund.

38. Within 60 days after Commission approval of the Plan, the Fund Administrator shall:

- (a) design and submit a Claims Packet, including the Plan Notice and the Claim Form, to the Commission staff for review and approval;
- (b) create a mailing and claim database of all Preliminary Claimants based upon information identified by the Fund Administrator;

- (c) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date;
- (d) email and/or mail a Plan Notice to each Preliminary Claimant identified by the Fund Administrator;
- (e) establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website, located at www.ImpactTheoryFairFund.com, will make available a copy of the approved Plan, provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions, include the Claim Form and other related materials in downloadable form, and such other information the Fund Administrator believes will be beneficial to Preliminary Claimants;
- (f) establish and maintain a toll-free telephone number, (833) 285-3401, for Preliminary Claimants to call to speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The toll-free number will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website; and
- (g) establish and maintain a traditional mailing address and an email address, which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website.

39. The Fund Administrator will publish the Summary Notice on the internet and/or in print media acceptable to Commission staff three times and will appear within 10 days of the initial mailing of the Plan Notice.

40. 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 any communication with Preliminary Claimants.

41. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with the calendar date, which is 180 days from the date of the initial mailing of the Plan Notice.

42. The Fund Administrator will promptly provide a Claims Packet to any Preliminary Claimant upon request made via mail, phone, or email prior to the Claims Bar Date.

43. The Fund Administrator will attempt to locate any Preliminary Claimant whose mailing is returned as "undeliverable" and will document all such efforts. The Fund Administrator shall use commercially available resources and other reasonably appropriate means to obtain updated addresses in response to "undeliverable" notices and forward any returned mail for which an updated address is provided or obtained. The Fund Administrator will make available, upon request by the Commission staff, a list of all Preliminary Claimants whose Plan Notices have been returned as "undeliverable" due to incorrect addresses and for which the Fund Administrator has been unable to locate current addresses.

Filing a Claim

44. To avoid being barred from asserting a claim, on or before the Claims Bar Date each Preliminary Claimant must submit to the Fund Administrator a properly completed Claim Form reflecting such Preliminary Claimant's claim, together with all required supporting documentation as the Fund Administrator, in its discretion, deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third party documentary evidence of purchases and dispositions of the Security during the Relevant Period, as well as holdings of the Security at pertinent dates, valid and authenticated wallet and/or exchange connections as part of an online claim, account statements and/or documentation of centralized exchange transactions, attributable exchange and/or wallet account information in the form of screenshots or videos as visual proof of ownership, any requested explanatory information or attestations, and/or any required personal identification information.

45. Electronic claims submission is encouraged. The Plan Notice will include instructions on how Preliminary Claimants can submit their claims electronically via the Fair Fund's website. If using the web-based claim filing option, a Preliminary Claimant must submit his, her, or its claim to the Fund Administrator by 11:59 p.m. on the Claims Bar Date. The Plan Notice will also include instructions on submitting claims by other means if the Preliminary Claimant is unable to submit his, her, or its claim electronically.

46. The burden will be on the Preliminary Claimant to ensure that his, her, or its Claim Form has been properly completed and timely received by the Fund Administrator. A Claim Form that is postmarked or otherwise received after the Claims Bar Date will not be accepted unless the deadline is extended by the Fund Administrator for good cause shown, after consultation with the Commission staff.

47. All Claim Forms and supporting documentation necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Fair Fund under the terms of this Plan must be certified by the Preliminary Claimant under penalty of perjury under the laws of the United States as true and correct. The certification must be executed by the Preliminary Claimant, unless the Fund Administrator accepts such certification from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems necessary.

48. 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 Fund Administrator in this matter. Claims filed by Third-Party Filers that do not comply with the template and format provided by the Fund Administrator may be rejected. Each Third-Party Filer must also submit a signed master proof of claim and release and certify that it has the authority to file on behalf of the claimant(s). Failure to do so may result in rejection of the claim.

49. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of Securities as the Fund Administrator deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Preliminary Claimant (beneficial account owner) and their Social Security Number (for individuals) or Employer Identification Number (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 Securities (account statements, confirmations and other documentation of purchases and dispositions), as well as holdings of the Securities during the Relevant Period. 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 Fund Administrator determines that such documentation is acceptable. The Fund Administrator will have the right to request, and the Third-Party Filer will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed necessary by the Fund Administrator to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Fund Administrator will result in rejection of the affected claim(s). The determination of the Fund Administrator to reject a claim for insufficient documentation, as reflected in the Determination Notice, is final and within the discretion of the Fund Administrator.

50. The receipt of Securities by gift, inheritance, devise, or operation of law will not be deemed to be a purchase of Securities, 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. The recipient of Securities 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 Plan. Only one claim may be submitted regarding the same transactions in the Securities, and in cases where duplicative claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

51. 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 Fund Administrator will distribute 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.

52. The Preliminary Claimant has the burden of notifying the Fund Administrator of a change in his, her, or its current address and other contact information and ensuring that such information is properly reflected on the Fund Administrator's records.

Review of Claims and Deficiency Process

53. The Fund Administrator will review all claim submissions and determine the eligibility of each Preliminary Claimant to participate in the Fair Fund by reviewing claim data and supporting documentation (or the lack thereof) and verifying the claim. Each Preliminary Claimant will have the burden of proof to establish the validity and amount of his, her, or its claim. The Fund Administrator will have the right to request, and the Preliminary Claimant will have the burden of providing to the Fund Administrator, any additional information or documentation that it deems necessary to support the claim.

54. The Fund Administrator will provide a Claim Status Notice within 120 days of the Claims Bar Date to each Preliminary Claimant who has filed a deficient Claim Form with the Fund Administrator. The Claim Status Notice will provide to each Preliminary 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). In the event the claim is denied, in whole or in part, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Fund Administrator and provide instructions regarding what is required to do so.

55. Any Preliminary Claimant with a deficient claim will have 30 days from the date of the Claim Status Notice to cure any deficiencies identified in the Claim Status Notice.

56. Any Preliminary Claimant who wishes to request reconsideration of a denied claim must submit his, her, or its written request to the Fund Administrator in writing within 30 days of the date of the Claim Status Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

57. The Fund Administrator will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis or in groups of claims.

Claims Eligibility Determination

58. Within 180 days of the Claims Bar Date, the Fund Administrator will complete all claims determinations and send a Determination Notice to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide to each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Fund Administrator's final ruling regarding the eligibility status of the claim.

59. The Fund Administrator may consider disputes of an Eligible Claimant's Recognized Loss calculation if notice of the dispute is presented in writing to the Fund Administrator within 30 days of the date of the Determination Notice. The Fund Administrator will consult with Commission staff as appropriate. Within 30 days of receiving an Eligible Claimant's notice of dispute, the Fund Administrator will notify the Eligible Claimant, in writing, of its calculation of the Eligible Claimant's Recognized Loss after considering the dispute. This notice will constitute the Fund Administrator's final ruling regarding the Recognized Loss calculation for the claim.

Distribution Methodology

60. Any Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss as calculated in accordance with the Plan of Allocation, will be deemed an Eligible Claimant.

61. No Distribution Payments will be made for less than \$20.00. If an Eligible Claimant's Recognized Loss, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$20.00, that Eligible Claimant will be excluded from receiving a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$20.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$20.00 will be deemed a Payee and will receive a Distribution Payment.

62. All Eligible Claimants whose Recognized Loss calculates to a distribution amount greater than \$20.00 will be deemed a Payee and receive a Distribution Payment.

63. Prior to issuing any Distribution Payments, the Fund Administrator will screen all Eligible Claimants against OFAC and FinCEN sanctions lists to identify any claimants who are Excluded Parties under paragraph 14(h) of the Plan.

Wallet Screening

64. Prior to issuing any Distribution Payments, the Fund Administrator will, using Chainalysis or another similar blockchain analysis platform, check all wallet addresses provided by Eligible Claimants in connection with their Claim against sanctions lists issued by the United States, the European Union, or the United Nations (“Sanctions Lists”). This screening will detect wallets: (i) specifically identified on the Sanctions Lists, and/or (ii) identified as related to one or more sanctioned wallets identified in (i).

65. With respect to the wallets described in paragraph 64(ii), within 14 days of the Commission staff’s review and approval of the Wallet Screening results, the Fund Administrator will send a Wallet Screening Status Notice providing to any Claimant whose wallet is flagged 21 days to dispute their affiliation with or relation to a wallet flagged under 64(i). The Wallet Screening Status Notice will identify the wallets at issue, as well as the sanctioned wallet address and, as appropriate, additional details regarding the screening flag so that the Claimant can respond with a written explanation of the Claimant’s affiliation or interaction with the sanctioned wallet and any supporting documentation. Within 14 days of receipt of the explanation, the Fund Administrator will notify the Claimant as to the resolution of the Wallet Screening with respect to that Claimant.

Establishment of a Reserve

66. Before determining the amount of funds available for distribution and calculating each Payee’s Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the “Reserve”).

67. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 92 below.

Preparation of the Payment File

68. Within 90 days following the date of the Determination Notices described above in paragraph 59, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the “Payee List”). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission staff representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees’ names, addresses, Recognized Losses, and amounts of their Distribution Payment; (c) includes the number of Payees to be compensated; (d) includes the percentage of the Payee’s Recognized Loss being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage of losses compensated including all prior disbursements; (e) includes the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

69. Prior to the disbursement of funds from the Net Available Fair Fund, the Fund Administrator will establish an escrow account (the “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 an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff.

70. The Fund Administrator, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (e.g. controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the Federal Deposit Insurance Corporation (“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.

71. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the “Escrow Property”), shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be of a type and term necessary to meet the cash liquidity requirements for payments to Payees, tax obligations, and/or fees of the Tax Administrator and/or Fund Administrator, including investment or reinvestment in a bank account insured by the 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 United States Government.

72. The Fund Administrator shall provide original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator monthly and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

73. The Fund Administrator shall deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Distribution Account.

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

Distribution of the Fair Fund

75. The Fund Administrator will seek to distribute the Net Available Fair Fund to all Payees only after all Claim Forms have been processed and all Preliminary Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest the Fund Administrator’s decision or cure their claim pursuant to the procedures set forth herein.

76. Upon the Commission staff's receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will seek an order from the Commission pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 210.1101(b)(6), to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission order.

77. Upon issuance of an order to disburse, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within 10 business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

78. All Distribution Payments will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of 120 days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her, or its check by the stale date, and the funds will remain in the Fair Fund, except if a check reissue has been requested before the stale date, such request is governed by paragraph 86.

79. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her, or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after 120 days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

80. All Distribution Payments, either on their face or in the preceding or accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Commission to compensate investors for harm caused by securities law violations.

81. Distribution Payments must be made by check or electronic payment payable to the Payee (the beneficial account owner). A Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

82. The submission of a Claim Form and the receipt and acceptance of a Distribution Payment by a Payee is not intended to be a release of a Payee's rights and claims against any party.

83. Electronic or wire transfers may be utilized at the discretion of the Fund Administrator. Wire transfers will be initiated by the Fund Administrator using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Fund Administrator's senior staff.

84. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution

Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

85. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as “undeliverable.” If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search, or if the distribution check is returned again, the check shall be voided. If the Fund Administrator is unable to find a Payee’s correct address, the Fund Administrator, in its discretion, may remove such Payee from the distribution and the Distribution Payment will remain in the Fair Fund. If another distribution is feasible, the Distribution Payment will be reallocated *pro rata* for distribution to the remaining Payees.

86. The Fund Administrator will reissue checks or electronic or other payments to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine its authenticity and the propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will bear a stale date of 120 days from issuance of the original check, and in no event will a payment be reissued more than 120 days from the original issuance without the approval of Commission staff.

87. The Fund Administrator will make reasonable efforts to contact Payees who have failed to negotiate their Distribution Payment check or receive their electronic or other payment and take appropriate action to follow up on the status of uncashed checks or other undelivered payments at the request of Commission staff.

Administrative Costs

88. Except as provided in paragraph 74, all Administrative Costs will be paid from the Fair Fund in accordance with the Commission’s Rules. Upon completion of the final distribution, the Fund Administrator, in consultation with the Commission staff, shall arrange for the final payment of all Administrative Costs.

Disposition of Undistributed Funds

89. If funds remain following the initial distribution, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution of any remaining funds, pursuant to the Commission’s Rules.

90. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the “Residual”). The Residual may include funds from, among other

things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds received due to the Fair Fund's overpayment of taxes or for waiver of IRS penalties.

91. Upon completion of the final distribution, the Fund Administrator will direct the Bank to void/stop payment on all Distribution Payments and return any funds remaining in the Escrow and Distribution Accounts to the Commission to become part of the Residual.

92. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to Respondent would be inconsistent with the equitable principle that no Person should profit from their own wrongdoing. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

Filing of Reports and Accountings

93. In accordance with Rule 1105(f) of the Commission's Rules, the Fund Administrator shall provide to the Commission staff a progress report and a quarterly account statement in a format to be provided by Commission staff, within 45 days of the Commission's approval of the Plan and shall provide to Commission staff additional reports and quarterly account statements within 20 days after the end of every calendar quarter. Such progress reports shall inform the Commission staff of the activities and status of the Fair Fund during the reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Fair Fund, including among other things, an interim accounting of all monies in the Fair Fund. The report shall also describe anticipated activities pursuant to the Plan timeline (specific due dates do not need to be included).

94. When the final distribution is completed, the Fund Administrator shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Fund Administrator shall make arrangement for the final payment of all Administrative Costs and submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan in a format provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities and any other information requested by the Commission staff.

Miscellaneous

95. When administering this Plan, the Fund Administrator, and/or each of its designees, agents, and assigns, may rely on all applicable law; orders issued by the Commission, including orders issued by delegated authority; orders issued by an administrative law judge, if any, appointed in this proceeding; and any records, including records containing investor information provided by Commission staff.

96. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission's termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with this Plan and pursuant to the Commission's Rules.

Wind-down and Document Retention

97. The Fund Administrator will shut down the website, P.O. Box, and customer service telephone line(s) established specifically for the administration of the Fair Fund six months after the transfer of any remaining funds to the Commission or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

98. The Fund Administrator will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the Commission staff's direction, the Fund Administrator will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

99. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred: (a) a final accounting in a standard accounting format provided by the Commission staff has been submitted by the Fund Administrator and approved by the Commission; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Fair Fund has been returned to the Commission for transfer to U.S. Treasury.

100. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of any amounts remaining in the Fair Fund that are infeasible to distribute to investors, and any amounts returned to the Fair Fund in the future that are infeasible to distribute to investors, to the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; (c) cancellation of the Fund Administrator's bond; and (d) termination of the Fair Fund.

101. Once the Fair Fund has been terminated and the Residual, if any, is transferred to the U.S. Treasury, no further claims will be allowed and no additional payments will be made whatsoever.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation⁵ is designed to compensate investors based on their losses on the purchase and acquisition of the Securities, unregistered crypto assets known as Founder's Keys, in an offering by Impact Theory and on the secondary market from October 13, 2021, through August 27, 2023, both dates inclusive (the "Relevant Period") due to the conduct of the Respondent. Investors who did not purchase or acquire the Securities during the Relevant Period, or who are an Excluded Party, are ineligible to recover under this Plan.

The Fund Administrator will calculate the amount of loss for each Founder's Key purchased or acquired during the Relevant Period ("Recognized Loss per Key") as follows:

⁵ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

Founder's Keys are not fungible. Consequently, the Recognized Loss per Key will be calculated for each separately identified Founder's Key. For each Founder's Key purchased or acquired during the Relevant Period and

- A. Sold prior to August 28, 2023 (the date the Order was issued),⁶ the Recognized Loss per Key is the purchase/acquisition price of the Founder's Key *minus* the sale price, *plus* the royalty paid by the Preliminary Claimant to the Respondent.⁷ For example, if a hypothetical Preliminary Claimant purchased a Founder's Key during the Relevant Period for 1 ETH and then sold the same Founder's Key during the Relevant Period for 0.5 ETH (of which 0.05 ETH was paid to the Respondent as a royalty and 0.0125 ETH was paid to the secondary market trading platform), the Preliminary Claimant's Recognized Loss per Key for that Founder's Key would be $1 \text{ ETH} - 0.5 \text{ ETH} + 0.05 \text{ ETH} = 0.55 \text{ ETH}$.
- B. Sold on or after August 28, 2023, and before November 26, 2023 (i.e., during the "Lookback Period"), the Recognized Loss per Key is *the lesser of*:
 - i. the purchase/acquisition price of the Founder's Key *minus* the sale price, *plus* the royalty paid (if any) by the Preliminary Claimant to the Respondent; or
 - ii. the purchase/acquisition price of the Founder's Key *minus* \$418.04 (the average sale price of Founder's Keys during the Lookback Period)⁸ *plus* the royalty paid (if any) by the Preliminary Claimant to the Respondent.
- C. Still held as of November 26, 2023, the Recognized Loss per Key is the purchase/acquisition price of the Founder's Key *minus* \$418.04, the average sale price of Founder's Keys during the Lookback Period.

If the Recognized Loss per Key calculates to a negative number, reflecting a gain, the Recognized Loss per Key will be \$0.00.

Additional Provisions

Acquisitions: The receipt or grant of Founder's Keys to the Preliminary Claimant by gift, devise, inheritance, or operation of law during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Founder's Keys acquired outside of the Relevant Period will be excluded from the calculation of the Recognized Loss per Key.

Recognized Loss: A Preliminary Claimant's Recognized Loss will be the sum of the Recognized Losses per Key, as calculated above, on all Founder's Keys purchased or acquired by

⁶ This includes sales to the Respondent as part of its repurchase programs.

⁷ For purposes of calculations in this Plan of Allocation, all royalties are assumed to be paid by the seller. Purchase amounts and sales proceeds will be converted to U.S. dollars using the appropriate exchange rate as of 11:59 p.m. UTC on the day the funds are paid or received, respectively. All prices mentioned in the calculation are before the payment of any taxes, commissions, fees, including gas fees and transaction fees, and royalties paid to the Respondent. That is, the prices exclude the effects of any taxes, commissions, fees, including gas fees and transaction fees, and royalties paid to the Respondent.

⁸ Calculated by staff economists using data from EtherScan.io.

the Preliminary Claimant during the Relevant Period. The Recognized Loss may be adjusted according to the provisions that follow.

Market Loss Limitation: If a Preliminary Claimant's actual market loss on all Founder's Keys purchased/acquired during the Relevant Period is less than his, her, or its Recognized Loss, then the Preliminary Claimant's Recognized Loss shall be limited to the actual market loss amount. If the actual market loss calculates to a gain, then the Preliminary Claimant's Recognized Loss will be \$0.00. The actual market loss will be calculated as (a) the total purchase amount for Founder's Keys purchased/acquired during the Relevant Period *plus* the royalties paid (if any) by the Preliminary Claimant to the Respondent, *less* the sum of (b) the sales proceeds (before payment of any royalties or fees to the trading platform) from Founder's Keys purchased/acquired during the Relevant Period and sold during the Relevant Period or during the Lookback Period, and (c) the holding value on the remaining of those Founder's Keys purchased/acquired during the Relevant Period, which for purposes of this calculation will be \$418.04, the average sale price of Founder's Keys during the Lookback Period.

Eligible Claimant: A Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated above, will be deemed an Eligible Claimant.

Allocation of Funds: If the Net Available Fair Fund is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her, or its Recognized Loss, plus "Reasonable Interest" if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her, or its "*Pro Rata Share*" of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the "Minimum Distribution Amount."

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, the Fund Administrator, in consultation with the Commission staff, may include Reasonable Interest in the distribution amount to compensate Eligible Claimants for the time value of their respective Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant's Reasonable Interest amount will be equal to his, her, or its *Pro Rata Share* of the excess funds.

Pro Rata Share: A *Pro Rata Share* computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Fund Administrator shall determine each Eligible Claimant's *Pro Rata Share* as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$20.00. If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount (inclusive of Reasonable Interest, if any) equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Each Payee will receive a Distribution Payment equal to his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss, plus Reasonable Interest, if applicable.

Prior Recovery: To avoid payment of a windfall, the Distribution Payment will be no larger than the Payee's Recognized Loss minus the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator. Prior recoveries do not include sales of Founder's Keys back to the Respondent through its repurchase programs, as these sales are accounted for in the Recognized Loss per Key calculation above. Reasonable Interest, if awarded, may be added to such Distribution Payment. That is, the distribution amount will be capped at the Recognized Loss *less* the Prior Recovery, *plus* any Reasonable Interest awarded.