

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18473**

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**In the Matter of**

**VISIUM ASSET MANAGEMENT, LP**

**Respondent.**

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**PLAN OF DISTRIBUTION**

**Introduction**

1. This Plan of Distribution (the “Plan”) has been developed pursuant to Rule 1101 of the Securities and Exchange Commission’s (“Commission”) Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan provides for a distribution of the funds collected in the above-referenced proceeding from Visium Asset Management, LP (“Visium”) to compensate investors in the Visium Credit Master Fund, Ltd. through its offshore feeder fund -- Visium Credit Opportunities Offshore Fund, Ltd., and its domestic feeder fund -- Visium Credit Opportunities Fund, L.P. (collectively referenced herein as the “Credit Fund”), from July 1, 2011 to December 31, 2012, inclusive (the “Investment Period”) for the Credit Fund’s overpayment of management fees and performance fees.

**Background**

2. On May 8, 2018, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)<sup>1</sup> against Visium. The Commission determined that, from at least July 2011 to December 2012, Visium, through two of its portfolio managers, engaged in a mismarking scheme, using sham broker quotes to falsely inflate the value of securities held by the Credit Fund, for which Visium acted as investment adviser. As a result, the Credit Fund reported falsely inflated returns, overstated its net asset value (“NAV”), misclassified certain distressed assets, and overpaid performance and management fees. The Commission ordered Visium to pay to the Commission disgorgement of \$4,755,223, prejudgment interest of \$720,711, and a civil money penalty of \$4,755,223. Visium has since paid in full and the Commission currently holds more than \$10.2 million, comprised of \$5,475,934 in disgorgement and prejudgment interest, a \$4,755,223 civil money penalty, and accrued interest.

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<sup>1</sup> Securities Act Rel. No. 10494 (May 8, 2018).

3. By Order dated August 30, 2018, the Commission created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the “Fair Fund”), so that the civil money penalty can be distributed with the disgorgement and prejudgment interest paid by Visium for the benefit of harmed investors.<sup>2</sup>

4. The Fair Fund is deposited in an interest-bearing account at the United States Treasury Department’s (“Treasury”) Bureau of the Fiscal Service (“BFS”). All BFS fees will be paid by the Fair Fund in accordance with ¶ 45. Any additional funds timely received will be added to the Fair Fund for disbursement to investors pursuant to the Plan. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan has been approved by the Commission, and the Commission retains jurisdiction over implementation of the Plan.

### **Fund Administrator**

5. The Commission has appointed KCC, LLC as the Fund Administrator (the “Fund Administrator”).<sup>3</sup> Pursuant to Rule 1105(a) of the 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.

6. The Fund Administrator has obtained a bond in the manner prescribed by Rule 1105(c) of the Rules in the amount of \$10,231,157. The bond premium will be paid from the Fair Fund in accordance with ¶ 45.

7. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, assisting with the drafting of Plan, taking reasonable steps to identify and obtaining accurate mailing and payment information for Eligible Investors (defined below); establishing a website and staffing a call center to address inquiries during the distribution process; developing a distribution database; preparing accountings; cooperating with the Tax Administrator (defined below) to ensure compliance with tax laws, rules, and regulations; determining and ensuring compliance with all foreign jurisdiction requirements for serving notices and otherwise implementing the Plan; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria in the Plan as to Investor eligibility; disbursing the Fair Fund in accordance with the Plan; and reporting on the distribution to the Commission.

8. All reasonable fees and expenses of the Fund Administrator will be paid by the Fair Fund in accordance with ¶ 45. The Fund Administrator may submit an invoice quarterly for completed services to the Commission staff for filing with the Commission; upon approval of an application by the Commission, the Fund Administrator will be paid its reasonable fees and expenses for those services.

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<sup>2</sup> Order Establishing Fair Fund, Exchange Act Rel. No. 83998 (Aug. 30, 2018).

<sup>3</sup> Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 84608 (Nov. 16, 2018).

## **Tax Administrator**

9. The Commission has appointed Miller Kaplan Arase LLP as the Tax Administrator for the Fair Fund (the “Tax Administrator”).<sup>4</sup> The Tax Administrator is required to administer the Fair Fund as a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is responsible for, among other things, all income tax related reporting requirements including the preparation and filing of tax returns.

10. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission. All taxes and the fees and expenses of the Tax Administrator will be paid by the Fair Fund in accordance with ¶ 45.

## **Definitions**

11. As used in the Plan, the following definitions apply:
- (a) *Administrative Costs*. All costs of administering the Fair Fund, including taxes, fees, and expenses of tax and fund administration and all investment costs.
  - (b) *Distribution Methodology*. The methodology used to determine Investor eligibility for a distribution under the Plan and to calculate Distribution Payments as set forth at ¶¶ 17 to 22.
  - (c) *Distribution Payment*. A payment to an Eligible Investor in accordance with the Plan.
  - (d) *Eligible Investor*. An Investor who is not an Excluded Entity and who is determined by the Fund Administrator to be eligible under the Plan for a Distribution Payment.
  - (e) *Eligible Loss*. For each Eligible Investor, the sum of Overpaid Management Fees, Overpaid Incentive Allocation Fees, and, if applicable under ¶ 21, Reasonable Interest.
  - (f) *Excluded Entities*. The Respondent and its assigns; Steven Ku, the respondent in *Steven Ku*, Admin. Proc. No. 3-18474 (May 8, 2018), and any of his assigns, heirs, spouses, parents, dependents or controlled entities; Christopher Plaford, the defendant in *SEC v. Christopher Plaford*, 16-CV-4511 (S.D.N.Y.), and any of his assigns, heirs, spouses, parents, dependents or controlled entities; Stefan Lumiere, the defendant in *SEC v. Stefan Lumiere*, 16-CV-4513 (S.D.N.Y.) and any of his assigns, heirs, spouses,

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<sup>4</sup> Order Appointing Tax Administrator, Exchange Act Rel. No. 84004 (Aug. 30, 2018).

parents, dependents or controlled entities; and the Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as Fund Administrator.

- (g) *Incentive Allocation Fees.* The performance fees Visium charged Investors during the Investment Period on year-end unrealized gains and monthly distributed net profits. Visium calculated Incentive Allocation Fees after calculation of Management Fees and subject to the Loss Carryforward Provision. The Fund Administrator, working with the Commission staff, will determine Incentive Allocation Fees paid by investors using Visium's monthly "Statement of Changes" reports. A subset of the Credit Fund -- the Offshore Fund -- is held by a series of sub-funds, each with underlying investors. The Incentive Allocation Fees paid by the sub-fund will be allocated to the Investors within the sub-fund according to each Investor's holdings as reported at each month-end.
- (h) *Investment Period.* July 1, 2011 to December 31, 2012, inclusive.
- (i) *Investor(s).* Individuals and entities, or their lawful successors, who were investors in the Credit Fund during the Investment Period.
- (j) *Loss Carryforward Provision.* By this provision, Investors did not pay an Incentive Allocation Fee until any net losses previously allocated to the Investor were offset by subsequent net profits.
- (k) *Management Fees.* The monthly fees Visium charged Investors during the Investment Period for fund management. The fees were based on the value of each Investor's capital account as of the beginning of each month, and were calculated by Visium before deducting the Incentive Allocation Fees and after accounting for the Investor's contributions. The Fund Administrator, working with the Commission staff, will determine Management Fees paid by investors using Visium's monthly "Statement of Changes" reports. The Offshore Fund is held by a series of sub-funds, each with underlying Investors. The Management Fees paid by the sub-fund will be allocated to the Investors within the sub-fund according to each Investor's holdings as reported at each month-end.
- (l) *Net Fair Fund.* The assets of the Fair Fund, including investment income, less amounts expended or reserved for tax obligations and the fees and costs of administering the Fair Fund in accordance with the Plan.
- (m) *Percent NAV Inflation.* The percent by which the NAV was inflated as a result of the misconduct.

- (n) *Overpaid Management Fees.* The amount of Management Fees Visium charged Investors in excess of what should have been charged absent the misconduct.
- (o) *Overpaid Incentive Allocation Fees.* The amount of Incentive Allocation Fees Visium charged Investors for Credit Fund performance in excess of what should have been charged absent the misconduct.

### **Identification and Notification to Investors**

12. The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable. The Fund Administrator will identify Investors based on, among other things, information obtained by the Commission in connection with this matter and by information provided to the Fund Administrator in response to the Plan Notice (defined below, ¶ 13h).

13. Within forty-five (45) days of Commission approval of the Plan, the Fund Administrator shall:

- (a) create a mailing and claim database of all Investors based on information obtained by, and provided to, the Fund Administrator in connection with this matter;
- (b) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring updated mailing information for Investors;
- (c) establish and maintain a website dedicated to the Fair Fund. The Fair Fund's website, located at [www.VisiumFairFund.com](http://www.VisiumFairFund.com), will make available a copy of the approved Plan, provide information regarding the no-claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions in downloadable format, and provide such other information that the Fund Administrator believes will be beneficial to Investors;
- (d) establish a link to the Fair Fund's website from its own website, located at [www.kccllc.net](http://www.kccllc.net);
- (e) provide a copy of the approved Plan and Plan Notice to the Commission staff and request that the Commission staff establish a link to the Fair Fund's website on the Commission's webpage dedicated to this administrative proceeding, located at <https://www.sec.gov/divisions/enforce/claims/visium.htm>;

- (f) establish and maintain a traditional mailing address and an email mailing address, which will be listed on all correspondence from the Fund Administrator and posted on the Fair Fund's website;
- (g) establish and maintain a toll-free telephone number for Investors to call to speak to a representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The Fund Administrator will advise the Commission staff of the toll-free number, post the number on the Fair Fund's website, and include the number on all correspondence; and
- (h) send a Plan Notice that has been reviewed and approved by the Commission staff and the Tax Administrator that includes, as appropriate,
  - (i) a statement characterizing the distribution and the Plan, and making clear that the Fair Fund has been established by the Commission to compensate investors for harm as a result of securities law violations;
  - (ii) identifying and providing contact information for the Fund Administrator;
  - (iii) providing tax form(s) or identifying the appropriate IRS website and link for forms to be completed and executed by some or all Investors, as recommended by the Tax Administrator;
  - (iv) providing a certification to be completed and executed by Investors as to whether or not they are an Excluded Entity;
  - (v) seeking confirmation of Investor name and contact information for future communications; and
  - (vi) seeking payment information, including requests for wire (with currency conversion provided as an option) or mailed check payments.

14. The Fund Administrator will attempt to locate any Investor whose mailing is returned as undeliverable by the U.S. Postal Service, including an advanced address search, if and as feasible, and will document all such efforts. The Fund Administrator shall immediately re-mail any returned undeliverable mail for which the U.S. Postal Service has provided a forwarding address. Additional efforts by the Fund Administrator to identify new addresses for returned undeliverable mail will be conducted as necessary and economically reasonable after consultation with the Commission staff. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for persons whose mailings are returned as undeliverable; all such costs shall be paid by the Fair Fund in accordance with ¶ 45.

15. Once contacted by the Fund Administrator, Investors have the burden of notifying the Fund Administrator of a change in their address and other contact information, and of ensuring that such information is properly reflected in the Fund Administrator’s records.

16. The Commission staff retains the right to review and approve any material posted on the Fair Fund’s website and any scripts used in connection with communications with Investors.

### **Distribution Methodology**

17. This methodology is designed to compensate Eligible Investors for their Overpaid Management Fees and Overpaid Incentive Allocation Fees. The amount to be distributed to each Eligible Investor will be determined as described in the following paragraphs. In the view of the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Net Fair Fund.

18. The Fund Administrator will first remove from the list of potentially eligible Investors all Excluded Entities, resulting in a “Preliminarily Eligible List.”

19. For each Investor on the Preliminarily Eligible List, the Fund Administrator, working with the Commission staff, will calculate:

- (a) The Percent NAV (Net Asset Value) Inflation in each month of the Investment Period pursuant to the following formula:

$$\text{Percent NAV Inflation} = (\text{Net Asset Value} - \text{Net Asset Value Absent the Misconduct}) \div (\text{Net Asset Value Absent the Misconduct}).$$

- (b) Each Investor’s Overpaid Management Fees:

- (i) For each month during the Investment Period that an Investor was invested, by the following formula:

$$\text{Overpaid Management Fee} = (\text{Management Fee Paid by Investor} \times \text{Percent NAV Inflation for the month}) \div (1 + \text{Percent NAV Inflation for the month}); \text{ and}$$

- (ii) Aggregate the Investor’s Overpaid Management Fees across all months of the Investment Period.

- (c) Each Investor’s Overpaid Incentive Allocation Fees by:

- (i) Calculating the percent difference between the aggregate Incentive Allocation Fees paid by Investors on the Preliminarily Eligible List

during the Investment Period and the aggregate Incentive Allocation Fees that would have been paid during the same time period by those Investors absent the misconduct:

$$\text{Total Percent Overpaid Incentive Allocation Fees} = (\text{Total Incentive Allocation Fees Paid} - \text{Total Incentive Allocation Fees Paid Absent the Misconduct}) \div (\text{Total Incentive Allocation Fees Paid Absent the Misconduct}).$$

- (ii) If an Investor paid Incentive Allocation Fees during the Investment Period, calculating that Investor's Overpaid Incentive Allocation Fees as a fraction of the aggregate Incentive Allocation Fees Paid by all Investors on the Preliminarily Eligible List:

$$\text{Overpaid Incentive Allocation Fees} = (\text{Incentive Allocation Fees Paid} \times \text{Total Percent Overpaid Incentive Allocation Fees}) \div (1 + \text{Total Percent Overpaid Incentive Allocation Fees});$$

- (iii) If an Investor did not pay Incentive Allocation Fees during the Investment Period, that Investor's Overpaid Incentive Allocation Fees is \$0.

- (d) Each Investor's Eligible Loss as the sum of Overpaid Management Fees and Overpaid Incentive Allocation Fees.
- (e) If applicable under ¶ 21, each Investor's Reasonable Interest;
- (f) If an Investor's Distribution Payment as calculated in accordance with ¶ 20 is less than \$10.00, that Investor will be removed from the Preliminarily Eligible list and their preliminarily determined Distribution Payment treated as set forth in ¶ 22; all other Investors on the Preliminarily Eligible List will be deemed Eligible Investors and will receive a Distribution Payment as provided in ¶ 20.

20. If the Net Fair Fund has sufficient funds, each Eligible Investor will receive a Distribution Payment equal to the amount of their Eligible Loss. If the Net Fair Fund is not sufficient to pay the full Eligible Loss for all Eligible Investors, then each Eligible Investor will receive a Distribution Payment equal to the Net Fair Fund multiplied by the ratio of their Eligible Loss to the sum of the Eligible Losses of all Eligible Investors ("Pro-Rata Share").

21. If the Net Fair Fund has funds in excess of that necessary to pay each Eligible Investor a Distribution Payment equal to the amount of their Eligible Loss, the Fund Administrator, in consultation with the Commission staff, may include in the Distribution



Payments an additional amount to compensate each Eligible Investor for the time value of their respective Eligible Loss (“Reasonable Interest”).<sup>5</sup>

22. If an Investor’s Distribution Payment is less than \$10.00, the Investor will be determined to be ineligible and will not receive a Distribution Payment, and their Distribution Payment will be returned to the Net Fair Fund. If the distribution proceeds as a *Pro Rata* Distribution as defined in ¶ 20, the Fund Administrator will allocate such payment amounts to Eligible Investors on a *pro rata* basis.

### **Establishment of Escrow Account**

23. The Fund Administrator will establish an escrow account (the “Escrow Account”) at a United States commercial bank (the “Bank”) that is acceptable to the Commission staff. The Escrow Account shall be established pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the Commission staff, in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund as described above. The Fund Administrator shall also establish with the Bank a separate deposit account (the “Deposit Account”) (*e.g.*, controlled distribution account, managed distribution account, linked checking account or investment account) for the purpose of funding distribution payments to be distributed to Eligible Investors by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: Visium Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *Visium Asset Management, LP*, Administrative Proceeding File No. 3-18473.

24. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors, and tax obligations, including 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 United States government. All interest earned will accrue for the benefit of the Fair Fund.

25. Prior to the receipt of any funds in the Escrow Account, the Bank will provide to the Fund Administrator an attestation, in a form acceptable to the Commission staff, that all funds in the Escrow Account will be held for the Fair Fund and that the Bank will not place any lien or encumbrance of any kind upon the funds. The Fund Administrator will be the signatory on the Escrow Account, subject to the continuing jurisdiction and control of the Commission.

26. Upon transfer from the BFS, all funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented

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<sup>5</sup> “Reasonable Interest” will be calculated using the short-term Applicable Federal Rate, compounded quarterly from the end of each calendar year in which excess fees were paid through the approximate date of the disbursement of the Fair Fund.

check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls before they are honored by the Bank. 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 Deposit Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

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

### **Distribution of the Fair Fund**

28. The Fund Administrator, in consultation with Commission staff and the Tax Administrator, shall determine the Net Fair Fund by retaining a prudent reserve to pay any taxes, fees and expenses payable in connection with the Fair Fund, as well as a reasonable contingency for potential unforeseen issues.

29. The Net Fair Fund will be distributed to Eligible Investors as provided under the terms of the Plan. An Eligible Investor’s Eligible Loss, as determined in accordance with the Distribution Methodology above, will be used to determine the amount of their Distribution Payment.

30. The Fund Administrator may make one or more distributions to Eligible Investors pursuant to the Payee List process described below. With respect to distributions after the initial distribution and unless otherwise determined by the Fund Administrator in consultation with the Commission staff, each distribution will be limited to those Eligible Investors that negotiated the distribution checks issued in the immediately preceding distribution or that received electronic payments.

31. Within one hundred fifty (150) days of Commission approval of the Plan, the Fund Administrator shall prepare a final payee list (“Payee List”) that includes the names, addresses and Distribution Payment of Eligible Investors.

32. The Fund Administrator will also provide a “Reasonable Assurance Letter” as to the completeness and accuracy of the Payee List.

33. Upon receipt and review of the Payee List and Reasonable Assurance Letter, the Commission staff will obtain authorization from the Commission to disburse the Fair Fund consistent with Rule 1101(b)(6) of the Rules, 17 C.F.R. § 201.1101(b)(6). Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the Escrow Account. The Fund Administrator shall then use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within twenty-one (21) business days of the release of the funds into the Escrow Account (the “Initial Issue”). All efforts will be coordinated

to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

34. All Distribution Payments will be issued by the Fund Administrator from the Deposit Account. Subject to ¶ 38, all checks will bear a stale date of one hundred twenty (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. Except as otherwise provided in the Plan, an Eligible Investor's claim shall be extinguished if they fail to negotiate their check by the stale date. All such funds will remain in the Net Fair Fund.

35. All Distribution Payments shall be preceded or accompanied by a distribution notice (the "Distribution Notice") that will include, as appropriate: (a) a statement characterizing the distribution and clearly indicating that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations; (b) a statement from the Tax Administrator regarding the tax consequences of a Distribution Payment and informing Eligible Investors that the tax treatment of the distribution is the responsibility of each recipient and that the recipient 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 after one hundred twenty (120) days; and (d) providing contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. The Distribution Notice shall be submitted to the Commission staff and the Tax Administrator for review and approval. The Distribution Payment checks, on their face or the accompanying mailbag, shall clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

36. Electronic or wire transfers may be utilized at the discretion of the Fund Administrator for good cause shown, including without limitation, to make Distribution Payments to Eligible Investors who are unable to receive payment by check, or to transfer approved Distribution Payments on behalf of twenty (20) or more Eligible Investors. 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 authorization by two members of the Fund Administrator's senior staff.

#### **Post Distribution: Returned and Uncashed Checks**

37. The Fund Administrator will perform an advanced address search for checks that are returned as undeliverable, using the resources described above, ¶ 14, to the extent such search is feasible, and will reissue such checks so long as the new address is received, and the check reissued, within one hundred twenty (120) days of the Initial Issue. Furthermore, the Fund Administrator will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of Commission staff and will reissue such checks, if necessary, within one hundred twenty (120) days of the Initial Issue.

38. The Fund Administrator shall reissue checks to Eligible Investors, upon the receipt of a valid, written request from the Eligible Investor. Such reissued checks will be void

after sixty (60) days from the issuance and no checks will be reissued more than one hundred twenty (120) days from the Initial Issue.

39. A residual within the Fair Fund 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. Upon completion of all distributions under the Plan, the Fund Administrator shall remit the residual to the Commission for transfer to Treasury after the Commission approves the final accounting.

### **Accountings and Termination of the Fair Fund**

40. Once the Fair Fund has been transferred from the BFS to the Bank, the Fund Administrator will provide an accounting to the Commission staff during the first ten (10) days after the end of each quarter in a format acceptable to the Commission staff. Each accounting shall detail all monies earned or received and all monies spent in connection with the administration of the Plan during the reporting period.

41. Upon completion of all distributions pursuant to the Plan, the Fund Administrator shall make arrangements for the payment of taxes and administration fees and expenses, transfer all remaining funds to the Commission, and submit to the Commission staff a final accounting for Commission approval on the standardized accounting form provided by the Commission staff. The Fund Administrator also shall submit a final report to the Commission staff summarizing the distribution, including disbursed amounts, returned or unnegotiated payments, outreach efforts and costs, final distribution statistics including statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

42. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (a) a final accounting, in a Commission standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator for approval, and has been approved, by the Commission; (b) all taxes, fees and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission for transfer to Treasury. The Commission staff shall seek an order from the Commission, as appropriate, approving the final accounting, terminating the Fair Fund, canceling the Fund Administrator's bond, discharging the Fund Administrator, and transferring any amounts remaining in the Fair Fund, and any amounts returned to the Fair Fund in the future, to Treasury.

### **Miscellaneous**

43. With respect to Eligible Investors that are retirement plans covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and such plans' participants, the Fund Administrator will distribute Distribution Payments 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.

44. The recipient of an interest in the Credit Fund as a gift, inheritance, devise, or operation of law will participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted with regard to the same interest in the Credit Fund, 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.

45. All Administrative Costs shall be paid by the Fair Fund, first from the interest earned on the funds, and if the interest is not sufficient, from the corpus of the Fair Fund.

46. When administering the Plan, the Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the secretary by delegated authority, or an Administrative Law Judge; and/or any investor information provided by Commission staff.

47. The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan and to effectuate the general purposes of the Plan. The Fund Administrator will inform Commission staff of any changes needed to this Plan. Upon approval by the Commission staff, the Fund Administrator may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Commission approval is required to amend the Plan prior to implementation of the change.

48. The Fund Administrator will maintain all documents, including documents in any media, for six (6) years after approval of the final accounting. Pursuant to Commission staff direction, the Fund Administrator will either turn over to the Commission or destroy all documents six (6) years after the approval of the final accounting.