UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **DEAN PATRICK MCDERMOTT and MCDERMOTT INVESTMENT ADVISORS, LLC,** **Defendants, and** **MCDERMOTT INVESTMENT SERVICES, LLC,** **Relief Defendant.**	**Civil Action No. 19-CV-04229-KSM**

UNCONTESTED MOTION FOR AN ORDER TO SHOW CAUSE

Plaintiff, the Securities and Exchange Commission (the "SEC"), respectfully submits this Motion for an Order to Show Cause why this Court should not approve the proposed distribution plan (the "Plan"), which provides for the distribution of funds collected in this matter to compensate clients of defendants Christopher E. McClure and Westport Capital Markets, LLC harmed by the conduct set forth in the Complaint. A proposed order to show cause is attached as Exhibit 1 and the proposed distribution plan is attached to the proposed order to show cause as Attachment A. Accompanying this motion is a memorandum of law in support of the Plan.

Upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice so informing the Court and responding to any objections, and provide a proposed Order approving the Plan or an amended plan, as appropriate.

As reflected in the attached certification pursuant to Local Rule 7.1, counsel for the Defendant and the Relief Defendant has informed the undersigned that his clients do not object to the relief sought by this Motion.

WHEREFORE, the SEC respectfully requests that the Court enter an Order to Show Cause substantially in the form attached as Exhibit 1 to this Motion.

Dated: August 11, 2023

Respectfully submitted,

/s/ Catherine E. Pappas

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Exhibit 1: Proposed Order to Show Cause

CERTIFICATE OF COUNSEL PURSUANT TO LOCAL RULE 7.1(b)

I, Catherine E. Pappas, hereby certify that, by electronic mail dated August 10, 2023, Thomas McGonigle informed me that the Defendants and the Relief Defendant do not oppose the relief requested by the accompanying Motion for an Order to Show Cause.

Dated: August 11, 2023

/s/ Catherine E. Pappas
Catherine E. Pappas

CERTIFICATE OF SERVICE

I, Catherine E. Pappas, hereby certify that, on August 11, 2023, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of the Eastern District of Pennsylvania, using the electronic case filing system of the court. The electronic case filing system sends a "Notice of Electronic Filing" to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Catherine E. Pappas
Catherine E. Pappas

Attachment A

(Proposed Plan)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **DEAN PATRICK MCDERMOTT and MCDERMOTT INVESTMENT ADVISORS, LLC,** **Defendants, and** **MCDERMOTT INVESTMENT SERVICES, LLC,** **Relief Defendant.**	**Civil Action No. 19-CV-04229- JFL** **(Proposed) Distribution Plan**

I. OVERVIEW

1. This Distribution Plan (the "Plan") was developed by the Securities and Exchange Commission (the "SEC") in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the "Fair Fund"), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Dean Patrick McDermott ("McDermott"), McDermott Investment Advisors, LLC (collectively, the "Defendants"), and Relief Defendant McDermott Investment Services, LLC (the "Relief Defendant") in this proceeding.

2. As described more specifically below, the Plan seeks to compensate clients of MIA for avoidable transactional sales charges imposed by the Defendants in connection with the purchase of unit investment trusts (the "UIT Transactional Charges"). As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), the Plan seeks to compensate clients of the Defendants for UIT Transactional Charges paid from March 1, 2013, through December 31, 2014, inclusive (the "Relevant Period"). Based on information obtained by the SEC during its examination, investigation, and litigation, the SEC has concluded that it has all records necessary to calculate each client's harm. As a result, the Fair Fund is not being distributed according to a claims-made process.

3. The SEC has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

II. BACKGROUND

4. On September 13, 2019, the SEC filed a Complaint against the Defendants and the Relief Defendant The SEC alleged, among other things, that MIA and McDermott violated the Investment Advisers Act of 1940 (the "Advisers Act") by defrauding their advisory clients as a result of their undisclosed business practice of purchasing a version of unit investment trusts ("UITs") that imposed on their clients UIT Transactional Charges in order to generate additional income for MIS, notwithstanding the existence of lower-cost versions of the same UITs available to MIA advisory clients. (ECF No. 1).

5. Following a trial and jury verdict, on October 28, 2022, the Court entered final judgments that, in relevant part, ordered McDermott, MIA, and MIS, to jointly and severally pay $143,379.33 in disgorgement and $50,983.60 in prejudgment interest; MIA to pay $110,000 in civil penalties; and McDermott to pay $50,000 in civil penalties. (ECF Nos. 158, 159, and 160).

6. The Defendants and MIS paid in full. In accordance with the final judgments, all payments were made to the Court Registry Investment System ("CRIS") account under the caption of this case. (ECF Nos. 161-163).

7. By Order dated February 23, 2023, this Court established a Fair Fund; appointed Heffler, Radetich & Saitta, LLP as tax administrator for the Fair Fund ("Tax Administrator"); directed the Clerk of Court to send all funds held in the CRIS account, net any CRIS fees, to the SEC; and authorized the SEC to pay taxes, and the fees and expenses of the Tax Administrator, without further Court order. (ECF No. 172).

8. The SEC currently holds over $361,000 comprising the Fair Fund, in an interest-bearing account at the United States Department of the Treasury (the "Treasury") and any interest accrued will be added to, and become a part of, the Fair Fund.

III. DEFINITIONS

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

9. **"Administrative Costs"** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, the fees and expenses of the Third-Party, and CRIS fees incurred prior to the transfer of the Fair Fund to the SEC, and investment and banking costs.

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

11. **"Eligible Claimant"** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

12. **"Excluded Party"** shall mean: (a) the Defendants and Relief Defendant, and their advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Third-Party (*see* paragraph 28) its employees, and those Persons assisting the Third-Party in its role as the Third-Party; and (c) any purchaser or assignee for value of another Person's claim to obtain a recovery from the Fair Fund, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, or devise.

13. **"Fair Fund"** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants' violations alleged in the Complaint.

14. **"Final Determination Notice"** means the written notice sent by the Distribution Agent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 36, except for those whose Plan Notice were returned as "undeliverable," notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent's final ruling regarding the status of the claim.

15. "**Net Available Fair Fund"** means the Fair Fund less Administrative Costs.

16. **"Payee"** means an Eligible Claimant whose distribution amount is equal to or greater than $10.00, as calculated in accordance with the Plan of Allocation, and who will receive a Distribution Payment.

17. "**Person**" means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

18. "**Plan Notice**" means a written notice from the Distribution Agent to each Preliminary Claimant regarding the Court's approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the SEC's website; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant, including any information needed for tax administration; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent and/or the Third-Party as a resource for additional information or to contact with questions regarding the distribution.

19. "**Plan of Allocation**" means the methodology that will be used to determine if a Preliminary Claimant has suffered a Recognized Loss and to calculate the Distribution Payment, if any. The Plan of Allocation is attached as Exhibit A

20. "**Preliminary Claimant**" means a Person, or their lawful successors, identified by the SEC staff based on its review and analysis of applicable records obtained by the SEC during its examination, investigation, and litigation, who may have suffered a loss from UIT Transactional Charges paid during the Relevant Period.

21. "**Recognized Loss**" means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

22. "**Relevant Period**" is March 1, 2013 through December 31, 2014, inclusive.

23. "**UIT Transactional Charges**" means the avoidable transactional sales charges imposed by the Defendants on their clients in connection with the purchase of unit investment trusts.

24. **"Unresponsive Preliminary Claimant"** means a Preliminary Claimant whose address the Distribution Agent and/or Third-Party have not been able to verify and/or who does not timely respond to the Distribution Agent's or Third-Party's attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

IV. TAX COMPLIANCE

25. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with this Court's order of appointment. (ECF No. 172).

26. 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 imposed on distributions from the Fair Fund.

V. DISTRIBUTION AGENT

27. Catherine E. Pappas is proposed to be the distribution agent for the Fair Fund ("Distribution Agent"). As a SEC employee, the Distribution Agent shall receive no compensation, other than her regular salary as a SEC employee, for her services in administering the Fair Fund.

28. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed by the Court 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); causing the disbursement of the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible. The Distribution Agent will engage a third-party, Analytics, LLC (the "Third-Party"), to perform some of the administrative tasks (listed or otherwise) associated with administering the Plan. The Third-Party's fees and expenses will be paid from the Fair Fund as an Administrative Cost pursuant to a cost proposal submitted to and approved by the SEC staff.

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

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

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

31. Using information obtained during its examination, investigation, and litigation, the SEC has identified the Preliminary Claimants. Preliminary Claimants are limited to those Persons who may have suffered a loss as a result of paying UIT Transactional Charges during the Relevant Period.

Procedures for Locating and Notifying Preliminary Claimants

32. Within thirty (30) days of Court approval of the Plan, the Third-Party will:

a. create a database of all Preliminary Claimants based upon information provided by the Distribution Agent;

b. 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; and

c. send the Plan Notice to each Preliminary Claimant's mailing address.

Undeliverable Mail

33. If any mailing is returned as undeliverable, the Third-Party will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Third-Party will then resend it to the Preliminary Claimant's new address within thirty (30) days of receipt of the returned mail. If the mailing is returned again, and the Third-Party, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

34. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

Procedures to Request Plan Notice

35. Any Person who does not receive a Plan Notice described in paragraph 18 but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent or the Third Party within thirty (30) days from the date of approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with their communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available). The Third-Party will send a Plan Notice to the Person within thirty (30) days of receiving the Person's documentation, if the Distribution Agent determines that the Person should have received a Plan Notice.

Failure to Respond to Plan Notice

36. If a Preliminary Claimant is requested to respond and fails to respond within thirty (30) days from the initial mailing of the Plan Notice, the Third-Party, working with the Distribution Agent, will make no fewer than two (2) attempts to contact the Preliminary Claimant using alternative contact information (an updated address, telephone number, or email address) if available. The second attempt will, in no event, take place more than ninety (90) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Distribution Methodology

37. The Distribution Agent will work with the SEC staff, using the methodology in the Plan of Allocation, to determine whether a Preliminary Claimant has suffered a Recognized

Loss and to calculate their Distribution Payment, if any. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed Eligible Claimants. All Eligible Claimants whose distribution amount is equal to or greater than $10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee.

Recognized Loss Disputes

38. The Distribution Agent may consider disputes of a Preliminary Claimant's Recognized Loss calculation if notice of the dispute is presented in writing to the Distribution Agent, along with any supporting documentation, within thirty (30) days of the last mailing of the Plan Notice. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Final Determination Notices

39. Within one hundred fifty (150) days of the initial mailing of the Plan Notices, the Third-Party, working with the Distribution Agent, will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 38, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 36, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

Establishment of a Reserve

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

41. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 55.

Preparation of the Payment File

42. Within thirty days of the sending of the Final Determination Notice, the Distribution Agent will compile the Payee information, including the name, address, calculated Recognized Loss, the amount of the Distribution Payment, and any amount to be withheld for all Payees (the "Payee List").

The Escrow Account

43. Prior to the disbursement of funds from the Net Available Fair Fund, the Third-Party will establish an escrow account at a commercial bank not unacceptable to the SEC (the "Bank"), pursuant to an escrow agreement (the "Escrow Agreement") provided by the SEC staff.

Distribution of the Fair Fund

44. After preparation of the Payee List, the SEC will petition the Court for authority to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Third-Party in accordance with the Plan. Pursuant to the order, the funds will be transferred to the Bank, and the Third-Party will be responsible for issuing Distribution Payments to Payees in accordance with the Payee List. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee's bank account in accordance with written instructions provided to the Bank by the Third-Party.

45. 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. 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 as provided in paragraph 49.

46. 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 one hundred twenty (120) days from the date the original check was issued; and (d) contact information for the Distribution Agent and, as appropriate, the Third-Party 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 SEC staff for review and approval.

47. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

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

48. The Third-Party 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 Third-Party as "undeliverable," or whose electronic payment has been returned or rejected. If new address or payment information becomes available, the Third-Party will repackage the distribution check and send it to the new address, or reissue the electronic payment. If new address or payment information is not available after a diligent search and outreach attempts (and in no event no later than one hundred twenty (120) days after the initial mailing of the original check), or if the Distribution Payment is returned again, the check shall be voided and the Third-Party shall instruct the issuing financial institution to stop payment on such check or electronic payment. If the Third-Party is unable to find a Payee's correct address or payment information, the Distribution Agent, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

49. The Third-Party will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if 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 Third-Party will request, and must receive, documentation to support the requested change. The Third-Party, in consultation with the Distribution Agent, will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Third-Party will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of SEC staff.

50. The Third-Party will work with the issuing financial institution and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Third-Party is responsible for researching and reconciling errors and reissuing payments when possible. The Third-Party is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Escrow Account until returned to the SEC after the completion of all distributions under this Plan.

51. The Third-Party will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks (other than those returned as "undeliverable") and take appropriate action to follow-up on the status of uncashed checks at the request of the Distribution Agent. The Third-Party may reissue such checks, subject to the time limits detailed herein.

52. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment or electronic payment reissuance

costs due to incorrect information provided by the Eligible Claimant, may reduce the Payee's Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Receipt of Additional Funds

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

Disposition of Undistributed Funds

54. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent, in consultation with the SEC staff, may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made pursuant to a Court Order in a manner that is consistent with this Plan.

55. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (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 SEC, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

56. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the SEC and held pending a final accounting. Upon completion of the final accounting, the SEC staff will petition this Court seeking approval of the final accounting and recommending disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).[1] If distribution of the Residual to investors is infeasible, the SEC may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.[2]

Administrative Costs

57. All Administrative Costs will be paid from the Fair Fund in accordance with this Court's Orders.

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[1] Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6501(b).

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

Filing of Reports and Accountings

58. Upon completion of all distributions to Payees and payment of all Administrative Costs pursuant to the procedures described above, the Tax Administrator, working with the Third-Party, the Distribution Agent, and the SEC staff, will prepare and submit to the Distribution Agent a final accounting, on a standardized form provided by the SEC staff. The Third-Party will also submit a report to the SEC staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the SEC staff.

Termination of the Fair Fund

59. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the SEC staff, has been submitted by the Distribution Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the SEC's recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).

60. Once the SEC staff has reviewed and accepted the final accounting, the SEC will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

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

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate clients of McDermott Investment Advisors, LLC ("MIA")for avoidable transactional sales charges paid in connection with the purchase of unit investment trusts (the "UIT Transactional Charges") from March 1, 2013 through December 31, 2014, inclusive (the "Relevant Period"). Based upon records obtained by the SEC during its examination, investigation, and litigation, the SEC staff has identified those clients who may have suffered a loss from UIT Transactional Charges paid during the Relevant Period (the "Preliminary Claimants"). Clients who did not suffer a loss due to UIT Transactional Charges paid during the Relevant Period are ineligible to recover under this Plan. The SEC staff performed the calculations described below using account-level holdings and transactions data obtained by the SEC in the course of its examination, investigation, and litigation.

The Distribution Agent, working with the SEC staff, will calculate each Preliminary Claimant's Recognized Loss as follows:

For each account that bought unit investment trusts ("UITs") during the Relevant Period:

1. Isolate the purchases of UITs during the Relevant Period;
2. Determine the "Transactional Sales Charge Percentage" for each UIT from the UIT prospectus;
3. Multiply the Total Principal Amount for each purchase by Transactional Sales Charge Percentage for that UIT to determine the "UIT Transactional Charge" for that transaction.
4. Sum all UIT Transactional Charges paid by the Preliminary Claimant for each account during the Relevant Period. The Preliminary Claimant's Recognized Loss will be the sum of all UIT Transactional Charges paid during the Relevant Period for all of the Preliminary Claimant's accounts.

Qualified accounts, such as IRAs, as well as accounts with separate tax identification numbers, will be treated as separate Preliminary Claimants from individual accounts for purposes of determining Recognized Loss.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or deemed an Unresponsive Preliminary Claimant as defined in the Plan, will be deemed an Eligible Claimant.

Additional Provisions

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* Percent" 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: Reasonable Interest will be calculated for each UIT Transactional Charge included in the Recognized Loss calculation using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the calendar quarter of the UIT Transactional Charge 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, Reasonable Interest will awarded from the excess funds in proportion to each Eligible Claimant's full amount of Reasonable Interest.

Pro Rata Percent: A *Pro Rata* Percent computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant's *Pro Rata* Percent 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 $10.00. If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, he, she, or it 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 that are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment for 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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

DEAN PATRICK MCDERMOTT and MCDERMOTT INVESTMENT ADVISORS, LLC,

Defendants, and

MCDERMOTT INVESTMENT SERVICES, LLC,

Relief Defendant.

Civil Action No. 19-CV-04229-KSM

Memorandum in Support of Proposed Plan of Distribution

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I. Introduction

Plaintiff, the Securities and Exchange Commission (the "SEC"), respectfully submits this memorandum in support of its proposed plan of distribution (the "Plan") to distribute funds collected in this matter to compensate clients of McDermott Investment Advisors, LLC and Dean Patrick McDermott (collectively, the "Defendants") injured by the misconduct alleged in the Complaint.[1]

The SEC is simultaneously seeking, by the accompanying uncontested motion, the entry of an Order to Show Cause so that interested parties have the opportunity to object to the Plan (the "Motion"). If the Court grants the Motion and enters the proposed Order to Show Cause, upon the completion of the steps set forth in the Order to Show Cause, the SEC will file a notice (the "Notice"), so notifying the Court and responding to any objections, and provide a proposed Order approving the Plan or an amended plan, as appropriate. By this memorandum, and subject to the Notice, the SEC provides to the Court the factual and legal basis for approving the Plan.

II. Background

On September 13, 2019, the SEC filed a Complaint against Dean Patrick McDermott ("McDermott"); McDermott's registered investment adviser, McDermott Investment Advisors, LLC ("MIA") (collectively, the "Defendants"); and named McDermott's registered broker-dealer, McDermott Investment Services, LLC ("MIS"), as a relief defendant. The SEC alleged, among other things, that MIA and McDermott violated the Investment Advisers Act of 1940 (the "Advisers Act") by defrauding their advisory clients as a result of their undisclosed business practice of purchasing a version of unit investment trusts ("UITs") that imposed on their clients transactional sales charges in order to generate additional income for MIS, notwithstanding the

[1] The Plan is attached as Attachment A to the accompanying proposed Order to Show Cause.

existence of lower-cost versions of the same UITs available to MIA advisory clients. *See* ECF No. 1.

Following a trial and jury verdict, on October 28, 2022, the Court entered final judgments that, in relevant part, ordered McDermott, MIA, and MIS, to jointly and severally pay $143,379.33 in disgorgement and $50,983.60 in prejudgment interest; MIA to pay $110,000 in civil penalties; and McDermott to pay $50,000 in civil penalties. ECF Nos. 158, 159, and 160. The Defendants and MIS have paid in full. *See* ECF Nos. 161-163.

By Order entered February 23, 2023, upon uncontested motion by the SEC, the Court established a Fair Fund pursuant to Section 308(a) of the Sarbanes Oxley Act of 2002, 15 U.S.C. §7246(a); appointed Heffler, Radetich & Saitta, LLP as tax administrator for the Fair Fund ("Tax Administrator"); directed the transfer to the SEC of the funds held in the Court's registry account for this matter, and authorized the SEC to approve and arrange payment of tax obligations and tax administration costs without further Court order. ECF Nos. 172, 173.

The Fair Fund currently holds over $361,000, comprised of funds paid by the Defendants pursuant to the Final Judgments plus accrued interest. The money is held in an SEC-designated account with the United States Treasury. Additional accrued interest, and any amounts directed to the Fair Fund by administrative or Court order or otherwise, will be added to, and become a part of, the Fair Fund.

III. The Plan is Fair and Reasonable and Should be Approved.

By the Plan, the SEC seeks to compensate clients of the Defendants for avoidable transactional sales charges paid in connection with the purchase of unit investment trusts (the "UIT Transactional Charges") from March 1, 2013 through December 31, 2014, inclusive (the

"Relevant Period"). The Court should approve the Plan because it fairly and reasonably allocates the Fair Fund among the injured clients.

A district court has broad discretion in approving a plan of distribution, and that determination is reviewed for abuse of discretion. *Official Comm. Of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006)*; SEC v. Lange*, 97-cv-6018, 2002 U.S. Dist. LEXIS 5118, *2 (E.D. Pa. Mar. 28, 2002) (the district court has broad discretion to approve a proposed plan of distribution based on equitable principles). *Cf. SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218, 2007 U.S. App. LEXIS 8068, *3 (3d Cir. 2007) (observing that district courts have wide equitable discretion in fashioning distribution plans in receivership proceedings); *CFTC v. Eustace*, 05-cv-2873, 2008 U.S. Dist. LEXIS 11810, *15-16 (E.D. Pa. Feb. 19, 2008) (courts have broad discretion in supervising an equity receivership that extends to the review of the proposed distribution plan). District courts review distribution plans proposed by the SEC to determine whether the plan fairly and reasonably distributes limited funds among the potential claimants. *See WorldCom*, 467 F.3d at 81-82, 84; *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991); *SEC v. Stinson*, 10-cv-3130, 2015 U.S. Dist. LEXIS, *9-10 (E.D. Pa. Jan. 8, 2015) (a court may approve a distribution plan provided that it is fair and reasonable). *See also Eustace*, 2008 U.S. Dist. LEXIS 11810, *17 (in considering a receiver's plan, attempting to determine the most "fair and equitable method of distribuiton").

Under the Plan, the undersigned, an SEC employee, will act as the distribution agent for the Fair Fund (the "Distribution Agent"). Plan ¶ 27. As an SEC employee, the Distribution Agent will receive no compensation other than her regular salary as an SEC employee, for her services in administering the Fair Fund. *Id*. To assist in the administration of the Fair Fund, the Distribution Agent will engage a third party, Analytics,

LLC ("Analytics"), to perform some of the administrative tasks associated with administering the Plan. Plan ¶ 28. Analytics' fees and expenses will be paid from the Fair Fund pursuant to a cost proposal submitted to and approved by the SEC staff.[2] *Id.*

Persons, or their lawful successors, identified by the SEC staff based on its review and analysis of records obtained during its investigation and litigation of this matter as possibly having suffered a loss from the misconduct described in the Complaint will be considered for eligibility for a payment under the Plan ("Preliminary Claimants").[3] Plan ¶ 2. Those Preliminary Claimants who are determined to have suffered a recognized loss as calculated under the Plan of Allocation attached as Exhibit A to the Plan ("Recognized Loss"), and who are not excluded under the Plan or unresponsive to attempts to obtain information necessary to the distribution, will be deemed to be "Eligible Claimants," and will receive a distribution payment if their distribution amount is equal to or exceeds $10.00 (the "Minimum Distribution Amount"). Plan ¶¶ 11, 16.

The Plan excludes from distribution the Defendants and those related to the Defendants. *See SEC v. McGinn, Smith & Co.*, 10-cv-457, 2019 U.S. Dist. LEXIS 35678, *5-7 (N.D.N.Y. Mar. 6, 2019) (and the cases cited therein) (district courts have discretion to exclude claimants involved in the underlying scheme). It also excludes Analytics and its employees to avoid any conflicts of interest, as well as entities that seek to capitalize on the distribution through the

[2]The SEC anticipates Analytics' fees and expenses will be less than $6,000; however this may change if Analytics is asked to do work not initially contemplated.

[3]The Plan does not include a claims process because, through its investigation and litigation of this matter, the SEC has identified those clients of the Defendants who paid UIT Transactional Charges during the Relevant Period. Plan ¶ 2. Preliminary Claimants will be informed of their calculated Recognized Loss through the Plan Notice, defined in the Plan at ¶ 18. Any person who does not receive a plan notice may request one if they believe they should be considered for a distribution. Plan ¶ 35.

exclusion of any entity that seeks to recover by purchasing for value a Preliminary Claimant's claim to obtain a recovery from the Fair Fund. Plan ¶ 12.

Under the Plan of Allocation, Recognized Losses will be calculated for each client account that purchased unit investment trusts ("UITs") from March 1, 2013 through December 31, 2014, inclusive (the "Relevant Period") by: (1) isolating the purchases of UITs during the Relevant Period; (2) determining the transactional sales charge percentage for each UIT by reviewing the UIT prospectus; (3) multiplying the total principal amount for each transaction from the trade blotters by the transactional sales charge percentage for that UIT to determine the UIT transactional charge for that transaction, and (4) adding up all of the UIT transactional charges during the Relevant Period for all accounts of the Preliminary Claimant. Plan, Exhibit A. If there are sufficient funds remaining, harmed investors may receive reasonable interest on their losses. *Id*. (Reasonable Interest)

When a determination is made by the Distribution Agent that additional distributions are not feasible, the Tax Administrator, working with the Distribution Agent, the Third-Party, and the SEC staff, will complete a final accounting for submission to the Court. Plan ¶ 58.

Upon completion of the final accounting, the SEC staff will file a motion with the Court to approve the final accounting, discharge the Distribution Agent, and terminate the Fair Fund. Plan ¶60. That motion will include a recommendation as to the disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020),[4] such as

[4] 15 U.S.C. § § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6501(b).

the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.[5]

The SEC believes that the Plan fairly and reasonably distributes the Fair Fund to clients harmed by the conduct underlying the Complaint and accordingly, respectfully requests that it be approved.

IV. Conclusion

For all of the foregoing reasons, the SEC respectfully requests that the Court approve the Plan and grant such other relief as the Court deems appropriate.

Dated: August 11, 2023

Respectfully submitted,

/s/ Catherine E. Pappas

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