

of 2002, as amended. Pursuant to the Order, Morgan Keegan and Company, Inc. will pay all reasonable costs and expenses of the distribution.

On August 30, 2011, the Commission issued an order appointing A.B. Data, Ltd. (“A.B. Data”) as the fund administrator to administer the distribution of the Fair Fund (Exchange Act Rel. No.65227 (Aug. 30, 2011)). On April 3, 2013, pursuant to Rule 1103, 17 C.F.R. § 201.1103, the Commission issued a Notice of Proposed Plan of Distribution and Opportunity for Comment (the “Notice”) for the distribution of monies placed into the Fair Fund (Exchange Act Rel. No. 69288 (April 3, 2013)). The Notice provided all interested parties thirty (30) days to submit a comment on the proposed Plan of Distribution (the “Plan”). The Notice advised interested parties that they could obtain a copy of the Plan by printing a copy from the Commission’s public website or by submitting a written request to Anik A. Shah, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. All persons who desired to comment on the Distribution Plan could submit their comments, in writing, no later than May 3, 2013. Six comments were submitted, three within the thirty (30) day comment period and three after.

After careful consideration, the Commission has concluded that the Plan should be approved in accordance with the changes described below in Section II.B. The Commission has further determined that the bond amount required under Rule 1105(c) will be set at \$100,300,000 as provided in the Plan.

II.

A. Public Comments on the Plan

1. The John N. Bolus Letter

John N. Bolus wrote a letter on behalf of Regions Investment Management, Inc., f/k/a Morgan Asset Management, Inc., and Morgan Keegan and Company, Inc. In his letter dated May 3, 2013, Mr. Bolus requested that the Commission reconsider its decision not to waive the requirement that the fund administrator, A.B. Data, obtain a bond pursuant to Rule 1105(c), 17 C.F.R. § 201.1105(c).¹ In support of his reconsideration request, Mr. Bolus argued that “there exist several layers of protection for the Fair Fund,” and cited five (5) factors he believes the Commission should consider.² Mr. Bolus argued that with the protections in place, the approximate \$200,000 annual cost of the bond that Morgan Keegan and Company, Inc. will have to bear is “unnecessary” and “burdensome.”

The Commission has considered the five factors cited by Mr. Bolus and, for the reasons below, good cause to waive the bond requirement has not been shown. Although we recognize that “positive pay” controls will be in place when the funds are held at Huntington to protect against payment on unauthorized checks, A.B. Data will have control over the distribution of those checks, including but not limited to, their amounts and the identification of payees.

Protection of the full amount of the Fair Fund is an important consideration.

¹ Rule 1105(c) states that “the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.”

² The five factors cited by Mr. Bolus are: 1) A.B. Data will have “no custody, and only limited control, of the Fair Fund”; 2) the Fair Fund will be held by the U.S. Treasury Department’s Bureau of the Public Debt (“BPD”) until immediately prior to the distribution; 3) after transfer from BPD, the Fair Fund will be held at The Huntington National Bank (“Huntington”), separate from Huntington’s assets; 4) checks and electronic transfers will be subject to “positive pay” controls; and 5) Huntington and A.B. Data will maintain insurance and/or a financial institution bond that covers errors and omissions, malfeasance and fraud.

The errors and omissions insurance and/or other insurance coverage that Mr. Bolus cites does not provide the same level of protection to investors that would be provided by a fund administrator bond. First, the bond amount can be set to cover the entire amount of the Fair Fund, thereby providing the most extensive protection against losses. A.B. Data's insurance coverage totals \$50 million, which is less than half the amount of the Fair Fund and is subject to claims from other parties to which A.B. Data provides services. Second, the fund administrator bond provides protections to investors for errors resulting from negligence rather than the "gross negligence" standard of most insurance. Third, a fund administrator bond provides the most direct recovery for the Fair Fund. For instance, with bond coverage, the SEC makes a claim directly against the bond, and the bond provider would directly reimburse the Fair Fund for any losses covered by the bond. The bond provider would then pursue a separate claim against the fund administrator for reimbursement for payments made to the Fair Fund. In contrast, if the Commission were to waive the bond requirement, a claim would have to be asserted against the fund administrator, which could, in turn, file a claim against its errors and omissions coverage for a reimbursement to the Fair Fund. The errors and omissions provider could deny the claim based on the myriad of policy exclusions, potentially resulting in litigation over whether the policy covers the Fair Fund's loss. Such a legal dispute would affect the timing and/or amount of a recovery by the Fair Fund, thereby delaying or limiting distributions to harmed investors. Finally, A.B. Data has obtained a commitment for a bond for this Fair Fund distribution at a cost of approximately \$200,000 annually. The relative cost of the bond as compared to the coverage afforded (the full \$100,300,000 Fair Fund) is not prohibitive and is a reasonable expense and cost associated with the distribution. Pursuant to the Order, Morgan Keegan and Company, Inc. will bear the cost of the bond. Therefore, the bond requirement will not reduce the amount of

money available to distribute to investors from the Fair Fund and will provide investors with the fullest protection available. Because good cause has not been shown, the fund administrator bond requirement is not waived.

2. Comments from the Office of the Secretary of the State of Mississippi

The Office of the Secretary of the State of Mississippi (“State Secretary”) submitted three comments on the Plan. The first comment proposed that paragraph thirty-five (35) of the Plan be revised to require A.B. Data to submit to the states’ securities regulators involved in the states’ action against Morgan Asset Management, Inc. and Morgan Keegan & Company, Inc. (together, “Morgan”) the same information regarding undelivered mailings that A.B. Data will submit to Commission staff under the Plan. The State Secretary’s second comment requests that paragraph thirty-six (36) of the Plan be revised to state that, since investors will not receive acknowledgement of receipt of their claim, A.B. Data “highly recommends” that investors send claims by certified mail, return receipt requested, or by some other method by which delivery can be confirmed, and that investors keep a file copy of the claim form. The Commission has considered these comments, and in response, paragraphs thirty-five (35) and thirty-six (36) of the Plan have been modified as suggested.

Finally, the State Secretary proposed that paragraph fifty-four (54) be revised to require the Commission staff to obtain authorization to disburse the Fair Fund from the Commission within twenty (20) days of receiving and reviewing the payee list, and the Commission staff cause the transfer of funds to the escrow account within twenty (20) days of the Commission’s authorization to disburse the Fair Fund. The time deadlines proposed are logistically impracticable. The plan provides that all efforts will be coordinated to keep the time between the receipt of the funds and the

transmittal process to a minimum. As a result, the Commission has not modified paragraph fifty-four (54).

3. Comments Regarding the Plan Methodology

The Commission received comments regarding the Plan's methodology from four individuals. Dr. W. W. Mayer and Johnny Bowen each submitted a comment asking that the Commission not adopt the methodology used by the States to distribute funds to injured investors, a methodology referred to as "rising tide." Since the Plan does not propose to use the rising tide methodology for the Commission's Fair Fund distribution, these comments are already resolved, and do not need to be addressed further.

Steven Green, Ph.D., Senior Professor, University of Miami, Coral Gables, Florida, states in his comment: "If I correctly understand this phrase within the proposed settlement '(without regard to the cost basis for those shares)', the claims paid under the Fair Fund will not reflect actual investor losses in that two people who purchased the same number of shares at two very different prices and therefore had the same holdings on 1 January 2007 would receive the same settlement even if their losses differed considerably. Such a method of calculation is manifestly unfair and only actual losses should be the basis for payment from the Fund."

It is the practice of the Commission to compensate investors for harm caused by the underlying securities law violations during the period of the violations. Under the circumstances here, where it would be impractical to calculate precise investor losses due in part to a lack of data about the funds' actual net asset values during the period of violations, the Commission selected the value of shareholders' holdings as of January 1, 2007, as a reasonable proxy for calculating investor harm. Accordingly, the Commission is not making any changes to the Plan based on this comment.

Finally, William S. Little asked: “why is the computation of the distribution amount not the same as the states fund?” In actuality, the Plan’s methodology is similar to the States’ distribution methodology; however, the States’ plan differs in three principal respects. First, the States’ plan covers a longer time period, from January 2007 through March 2008. This longer period corresponds to the broader allegations of the States’ cases, which in addition to valuation, also include allegations of misconduct concerning suitability, advertising, and marketing. Second, the States’ plan implements a “bottom up”/“rising tide” approach that compensates investors for 100% of their losses up to a certain threshold (\$1,000 for the States’ plan) and then on a *pro rata* basis for the remainder of losses. As a result, some investor loss computations under the States’ plan will not be the same as the compensation calculations under the Plan. Previously, the Commission concluded that *pro rata* compensation *without* the “bottom up”/“rising tide” component is in the best interests of all harmed investors. Therefore, the Plan did not include the “bottom up”/ “rising tide” component. Lastly, the Plan provides that distributions made to any investor will be reduced by the amount of any distribution the investor received from the States’ fund. For these reasons, the Commission will not make any changes to the Plan based on this comment.

B. Modifications to the Plan

The following modifications have been made to the Plan:

- Paragraph thirty-five (35) of the Plan has been revised to require the fund administrator to submit to the states’ securities regulators involved in the states’ action against Morgan the same information regarding undelivered mailings that the fund administrator will submit to Commission staff under the Plan.

- Paragraph thirty-six (36) of the Plan has been revised to state that each notice sent by the fund administrator will include language advising claimants to send claims by certified mail, return receipt requested, or by some other method by which delivery can be confirmed, since confirmation of receipt will not be sent by the fund administrator.

C. **The Bond Requirements of Rule 1105(c)**

Rule 1105(c) provides:

Administrator to Post Bond. If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S.C 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting a bond for good cause shown.

17 C.F.R. §201.1105(c). Based on the facts described above, good cause has not been shown for waiving the bond. The amount of the bond will be set at \$100,300,000, which is the amount of the Fair Fund.

III.

Accordingly, IT IS HEREBY ORDERED that:

- A. Pursuant to Rule 1104, 17 C.F.R. § 201.1104, the Plan is modified as described above, and approved with such modification; and
- B. The fund administrator, A.B. Data, shall obtain a bond in the manner prescribed in Rule 1105(c) in the approved amount of \$100,300,000.

By the Commission.

Elizabeth M. Murphy
Secretary