

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15124

In the Matter of :

David F. Bandimere :

Respondent. :

PROPOSED PLAN OF DISTRIBUTION

I. Overview

1. *Purpose.* The Division of Enforcement (“Division”) submits this proposed plan of distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for the distribution of the disgorgement and a civil money penalty paid by David F. Bandimere in the captioned administrative proceeding.

2. *Structure of the Plan.* The structure of the Plan is intended to compensate claimants harmed by Respondent’s sale of unregistered investments. The Commission staff has reasonably concluded that it has all records necessary to calculate investor’s Recognized Loss (defined below). The Plan does not provide for a claims process because: (a) the Commission has access to the records that are necessary to calculate investors’ relative harm, including the amount of funds raised in the Ponzi schemes; and (b) the Commission staff has sufficient records to calculate investors’ individual harm and total harm for all investors, so procedures for making, approving, and disputing claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

This Plan provides for the distribution of the Fair Fund, plus accrued interest and earnings thereon, less Administrative Costs (defined below) (“Net Available Fair Fund”) to those Eligible Claimants (defined below) pursuant to the Plan of Allocation, attached to this Plan as Exhibit A.

3. *Background.* On November 22, 2019, the Commission settled previously instituted cease-and-desist proceedings by issuing an Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act

of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the “Order”)¹ against David F. Bandimere (“Bandimere” or the “Respondent”). In the Order, the Commission found that between 2006 and 2010, the Respondent violated certain antifraud provisions of the Securities Act while operating as an unregistered broker in selling unregistered investments in IV Capital Ltd. (“IV Capital”) and Universal Consulting Resources LLC (“UCR”), two Ponzi schemes which the Commission brought actions against in 2011 and 2010 respectively.

The Order found that Bandimere raised at least \$9.3 million from over 60 investors while acting as an unregistered broker for these Ponzi schemes and earned transaction-based compensation, which provided the vast majority of his income during that time period. Bandimere initially sold IV Capital directly to investors, but then formed three LLCs to facilitate bringing in investors for both IV Capital and UCR. Bandimere also encouraged the investment of the investors’ retirement funds by setting up self-directed IRA accounts through a third-party provider.

The Order further found that Bandimere misled potential investors by presenting only a one-sided, positive view of the IV Capital and UCR investments while failing to disclose numerous red flags and potentially negative facts relating to those investments. Once Bandimere described IV Capital and UCR to potential investors in a materially positive way, he was under a duty to make fair and complete disclosure of these material red flags and negative facts. Bandimere also offered and sold securities in UCR and IV Capital when no registration statement was filed or in effect for the transactions, and no exemption applied to the registration requirements.

The Order further found that investors in Bandimere’s LLCs ultimately lost all of the money they had invested in the UCR and IV Capital programs, other than what was paid to them as purported returns or returns of capital, when those Ponzi schemes collapsed.

As a result of the conduct described in the Order, the Commission ordered the Respondent to pay disgorgement of \$370,000.00 and civil penalties of \$130,000.00. In the Order, the Commission established a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil penalties paid, along with the disgorgement paid, can be distributed to harmed investors (the “Fair Fund”).

The Respondent has paid a total of \$500,000.00 pursuant to the Order. The Fair Fund is currently deposited in an interest-bearing account at the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”). Other than potential interest income from the BFS investment, the Commission does not anticipate that the Fair Fund will receive additional funds.

4. *Jurisdiction and Control.* The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

¹ Securities Act Rel. No. 10728 (Nov. 22, 2019).

II. Definitions

As used herein, the following definitions shall apply:

5. “*Administrative Costs*” means all costs of administering the Fair Fund, including taxes, BFS fees, and other expenses of administration. All Administrative Costs shall be paid from the Fair Fund, first from the interest earned on the funds, and if the interest is not sufficient, then from the corpus of the Fair Fund.

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

7. “*Distribution Payment*” means a payment made from the Fair Fund to an Eligible Claimant in accordance with the terms of this Plan.

8. “*Eligible Claimant*” means any person or entity who suffered a loss as a result of transactions in Securities during the Relevant Period and who is determined by the Fund Administrator to be eligible for a Distribution Payment from the Fair Fund..

9. “*Excluded Party*” shall mean:

- (a) an Unresponsive Eligible Claimant;
- (b) Respondent, or Respondent’s advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities;.
- (c) The Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as the Fund Administrator; and
- (d) Any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

10. “*Fair Fund*” means the \$500,000 fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondent’s violations described in the Order.

11. “*Recognized Loss*” means the total amount of loss for an Eligible Claimant as calculated in accordance with the Plan of Allocation.

12. “*Net Available Fair Fund*” means the Fair Fund, plus accrued interest and earnings thereon, less Administrative Costs.

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

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

15. “*Relevant Period*” means the period from January 1, 2006 through December 31, 2010.

16. “*Securities*” refers to investments in IV Capital Ltd. (“IV Capital”) and Universal Consulting Resources LLC (“UCR”), two Ponzi schemes which the Commission brought actions against in 2011 and 2010 respectively.

17. “*Unresponsive Eligible Claimant*” means an Eligible Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator’s attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Eligible Claimants will not be eligible for a distribution under the Plan and will be considered an Excluded Party.

III. Administration of the Plan

18. *Fund Administrator.* Terry Miller is proposed to be the fund administrator for the Fair Fund (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,² no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for the Eligible Claimants (as defined above), preparing accountings, cooperating with the Tax Administrator in providing the information necessary to accomplish income tax compliance, and distributing money from the Fair Fund in accordance with the Plan. The Fund Administrator will engage a third-party, Analytics Consulting, LLC, to perform some of the administrative tasks associated with implementing the Plan (“Third-Party” or “Analytics”). Analytics’ fees and expenses will be paid by the Fair Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the Commission staff.

19. *Tax Administrator.* Pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds governing calendar years 2019-2021,³ the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund.⁴ The Tax Administrator shall be

² 17 C.F.R. § 201.1105(c).

³ Exchange Act Rel. No. 85174 (Feb. 22, 2019).

⁴ Exchange Act Rel. No. 90349 (Nov. 5, 2020).

compensated for all reasonable costs and expenses from the Fair Fund according to the terms of Tax Administrator's 2019-2021 Letter Agreement with the Commission.

20. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund 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.

IV. Plan Procedures

21. *Procedures for Locating and Notifying Eligible Claimants.* Within fourteen (14) calendar days of Commission approval of the Plan, the Fund Administrator will send to each Eligible Claimant's last known email address (if known) and/or mailing address a notice (the "Plan Notice") regarding the Commission's approval of the Plan, including, as appropriate: a statement characterizing the distribution, a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan, specification of any information needed from the Eligible Claimant, their 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 of the Fund Administrator in order to provide any requested information or to contact with questions regarding the distribution.

22. *Failure to Respond.* If an Eligible Claimant fails to respond within fourteen (14) days from the mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Eligible Claimant by telephone or email. The second attempt will in no event take place more than thirty (30) days from the mailing of the Plan Notice. If an Eligible Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in his discretion, may deem such Eligible Claimant as an Unresponsive Eligible Claimant and remove them from the distribution and the allocated Distribution Payment amount will remain in the Net Available Fair Fund and will be distributed to the remaining Eligible Claimants, if feasible.

23. *Undeliverable Mail.* If a Plan Notice is returned as undeliverable, the Fund Administrator will make his best practicable efforts to ascertain an Eligible Claimant's correct address. If another address is obtained, the Fund Administrator will then resend the Plan Notice to the Eligible Claimant's new address within fourteen (14) days of receipt of the returned mail. If the Plan Notice is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find an Eligible Claimant's correct address, the Fund Administrator, in his discretion, may deem such Eligible Claimant an Unresponsive Eligible Claimant and remove them from the distribution and the allocated Distribution Payment amount will remain in the Net Available Fair Fund and will be distributed, if feasible, to the remaining Eligible Claimants.

Any Eligible 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 Fund Administrator.

24. *Establishment of a Reserve.* Before determining the amount of funds available for distribution and calculating each Eligible Claimant's Distribution Payment, the Fund

Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay future Administrative Costs and to accommodate any unexpected expenditures (the “Reserve”). After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 31.

25. *Preparation of the Payment File.* After withholding the Reserve, the Fund Administrator will compile the payee information and prepare a payment file (the “Payee List”).

26. *Escrow Account.* Prior to the disbursement of the Net Available Fair Fund the Third-Party will establish an escrow account at a commercial bank not unacceptable to the Commission (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) provided by the Commission staff.

27. *Disbursement of the Net Available Fair Fund.* Pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), the Fund Administrator will obtain an order from the Commission to disburse the Net Available Fair Fund to the Bank in accordance with the Payee List and pursuant to the Escrow Agreement, for distribution by the Third-Party in accordance with the Plan. Pursuant to the order, the Net Available Fair Fund will be transferred to the Bank, and the Third-Party will be responsible for issuing Distribution Payments to Eligible Claimants in accordance with the Payee List.

The Distribution Payments, on their face, or the accompanying mailing shall clearly indicate that the money is being distributed from a Fair Fund established to compensate Eligible Claimants for harm suffered as a result of securities law violations.

For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the payee bank account in accordance with written instruction provided to the issuing financial institution by the Third-Party.

28. *Wind-Up and Reconciliation.* All checks issued shall bear a stale date of ninety (90) days. Checks that are not negotiated within this ninety (90) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An Eligible Claimant’s claim to payment is extinguished as of the stale date and the funds will remain in the Fair Fund. A check reissue request should be made within ninety (90) days from the original check issuance date as instructed in the mailing with the check. If a check reissue has been requested before the stale date, such request will be honored and the check reissue will bear a stale date of sixty (60) days. Accordingly, checks that are not negotiated within this 60 day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Claimant’s claim is extinguished as of the stale date and the funds will be added to the Residual.

The Third-Party will work with the issuing financial institution to obtain information about uncashed checks, 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. In the event that there are uncashed checks, the Third-Party will determine the extent

to which, under the circumstances in this distribution, it would be appropriate and feasible to make additional efforts to contact the Eligible Claimant(s). Following the conclusion of any efforts by the Third-Party to locate any such Eligible Claimant(s), the amount of all uncashed checks will be added to the Net Available Fair Fund and may be distributed, if feasible, to Eligible Claimants who received and cashed checks in the initial distribution. Such distribution will be made in accordance with the Plan of Allocation, pursuant to the Commission's Rules.

29. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute the Net Available Fair Fund according to the Plan. If there are any changes to the Plan that are determined to be material, Commission approval is required prior to implementation by amending the Plan. Immaterial changes may be made by the Fund Administrator. For good cause shown, the Fund Administrator may extend any of the procedural deadlines set forth in the Plan.

30. *Procedure for the Receipt of Additional Funds.* Should any additional funds be received for this matter by the Commission, prior to the Commission's termination of the Fair Fund, such funds will be added to the Net Available Fair Fund and distributed, if feasible, in accordance with the Plan of Allocation, pursuant to the Commission's Rules.

31. *Residual and Disposition of Undistributed Funds.* A residual account within the Fair Fund will be established for any amounts remaining after the final disbursement to Eligible Claimants from the Fair Fund (the "Residual"). The Residual may include, but not limited to, the Reserve, distribution checks that have not been cashed, funds from checks that were not delivered or from funds returned to the Commission, Fair Fund tax refunds for overpayment or for waiver of IRS penalties. All funds remaining in the Residual after all Administrative Costs have been paid that are infeasible to distribute to Eligible Claimants will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to the Respondent would be inconsistent with the equitable principle that no person should profit from his wrongdoing. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

32. *Accountings.* When all funds have been disbursed, except for the Residual described in paragraph 31 of the Plan, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

33. *Termination of the Fair Fund.* Following the final disbursement from the Net Available Fair Fund to Eligible Claimants, the Fund Administrator will make arrangement for the final payment of all Administrative Costs, and will submit a final accounting to the Commission. The Fair Fund will be eligible for termination after all of the following have occurred: (a) a final accounting, appearing on the standard accounting form supplied by the Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; (b) all Administrative Costs have been paid; and (c) any amounts remaining in the

Fair Fund has been received by the Commission. Upon Commission approval of the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) transfer of the amount remaining in the Residual, and any funds returned to the Fair Fund in the future, to the U.S. Treasury; (b) termination of the Fair Fund; and (c) discharge the Fund Administrator.

V. Notice of Proposed Plan and Opportunity for Comment

34. *Notice for Comment.* The Notice of Proposed Plan of Distribution (the “Notice”) will be published on the Commission’s website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days from the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission’s Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File Number 3-15124” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Exhibit A

Plan of Allocation

This Plan of Allocation is designed to compensate investors based on their losses on investments in IV Capital Ltd. and Universal Consulting Resources LLC (collectively, the “Securities”) purchased between January 1, 2006 and December 31, 2010 (the “Relevant Period”) due to the misconduct of the Respondent. Investors who did not invest in the Security during the Relevant Period are ineligible to recover under this Plan.

Based upon records obtained by the Commission during its investigation, the Commission has identified those who suffered a loss as a result of transactions in the Securities during the Relevant Period (the “Eligible Claimants”). The Fund Administrator has calculated the total amount of loss (the “Recognized Loss”) for each Eligible Claimant. Since the sum of Recognized Loss suffered by all Eligible Claimants exceeds the funds available for distribution the distribution will be made in a *pro rata* fashion. No distribution payment will be made for less than \$10.00 (the “Minimum Distribution Amount”).

A *pro rata* share computation is intended to measure Eligible Claimants’ Recognized Losses against one another. Each Eligible Claimant’s *Pro Rata* Share will be calculated as the ratio of the Eligible Claimant’s Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

The Fund Administrator calculated each Eligible Claimant’s Recognized Loss as follows:

1. Determined the amount paid into each of the Securities, by summing all monetary contributions made in the each of the Securities (“Payments In”);
2. Determined the amount received from each of the Securities, by summing all monetary payments received in each of the Securities (“Payments Out”);
3. Calculated each Eligible Claimant’s Recognized Loss by netting Payments In against Payments Out. If the Recognized Loss is less than zero, reflecting a gain, it will be deemed to be zero, and the Recognized Loss is \$0.00;
4. Calculated each Eligible Claimant’s *Pro Rata* Share as the ratio of the Eligible Claimant’s Recognized Loss to the sum of Recognized Losses of all Eligible Claimants;
5. Calculated each Eligible Claimant’s Distribution Payment by multiplying the Eligible Claimant’s *Pro Rata* Share by the Net Available Fair Fund;

Eligible Claimants whose Distribution Payment is less than the Minimum Distribution Amount will be removed from the list of Eligible Claimants, and steps (1) through (5) will be repeated resulting in a Distribution Payment for each remaining Eligible Claimant. In no event will an Eligible Claimant receive from the Fair Fund more than the Eligible Claimant’s Recognized Loss.

In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund to compensate an Eligible Claimant's harm.