

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5812 / August 2, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20448**

**In the Matter of**

**FIRST HEARTLAND  
CONSULTANTS, INC.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO 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**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against First Heartland Consultants, Inc. (“First Heartland” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to 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 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. First Heartland, a registered investment adviser, breached its fiduciary duty to advisory clients by failing to disclose three types of compensation paid to First Heartland's affiliated broker. Since at least January 2014, First Heartland's affiliated broker received revenue sharing payments from an unaffiliated clearing broker ("Clearing Broker") as a result of First Heartland's advisory clients' investments in certain mutual funds, including certain cash sweep money market mutual funds. The mutual funds and money market funds that resulted in revenue sharing payments were generally more expensive than lower-cost options available to clients, including in many instances when there were lower-cost share classes of the same mutual funds available to clients that did not result in any revenue sharing. In addition, since at least January 2014, First Heartland's affiliated broker received compensation resulting from the mark-up of several Clearing Broker fees charged to First Heartland's advisory clients. First Heartland did not adequately disclose to advisory clients both revenue sharing and fee mark-ups that were paid to its affiliated broker as well as the associated conflicts of interest.

2. First Heartland also breached its duty to seek best execution by causing certain advisory clients to invest in share classes of mutual funds that paid revenue sharing when share classes of the same funds were available to the clients that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions.

3. Furthermore, First Heartland failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection, money market cash sweep revenue sharing, and fee mark-up practices.

#### **Respondent**

4. Respondent First Heartland Consultants, Inc. is a Missouri corporation headquartered in Lake St. Louis, Missouri. It has been registered with the Commission as an investment adviser since 1994. In its Form ADV dated March 29, 2021, First Heartland reported that it had approximately \$1.49 billion in regulatory assets under management.

#### **Related Entity**

5. First Heartland Capital, Inc. ("FHC") is a Missouri corporation headquartered in Lake St. Louis, Missouri. It has been registered with the Commission as a broker-dealer since 1993. FHC shares common ownership and management with First Heartland.

---

<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Mutual Fund Revenue Sharing

6. Mutual funds typically offer different types of shares or “share classes.” Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among share classes is the fee structure. For example, some mutual fund share classes charge higher fees to cover costs of fund distribution and shareholder services. These fees generally negatively affect investor returns as the charges are deducted from the mutual fund’s assets. As a result, clients are often, though not always, better off investing in a mutual fund share class that does not include these additional fees versus a share class of the same fund that charges such a fee.

7. From at least January 2014 through November 2018, FHC had a revenue sharing agreement with Clearing Broker pursuant to which Clearing Broker paid FHC revenue based on the amount of First Heartland client assets invested in certain mutual funds and share classes thereof. Lower-cost share classes of those same funds were also generally available to the advisory clients for which Clearing Broker would have paid no or lower revenue sharing to FHC.

8. As an investment adviser, First Heartland was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself or its associated persons and its clients that could affect First Heartland’s advice to its clients. To meet this fiduciary obligation, First Heartland was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning First Heartland’s advice and have an informed basis on which to consent to or reject the conflicts.

9. As a result of the revenue sharing agreement, First Heartland had an incentive to recommend mutual funds, or particular share classes of certain mutual funds, that resulted in FHC receiving revenue sharing as opposed to those that did not. From January 1, 2014 to March 27, 2017, First Heartland did not disclose in its Forms ADV or otherwise that its affiliated broker received revenue sharing from Clearing Broker on certain share classes of mutual funds. On March 28, 2017, First Heartland added a disclosure to its Form ADV Part 2A (“Brochure”) that it participated in a program offered by its Clearing Broker that paid “revenue sharing [based on] assets that are held within this program.” First Heartland also disclosed that such an arrangement creates “the possibility of a conflict of interest.” However, First Heartland claimed it controlled this conflict by “always basing investment decisions on the individual needs of [its] clients.”

10. In none of its disclosures did First Heartland provide full and fair disclosure of all material facts regarding its conflicts of interest that arose when it invested advisory clients in mutual funds and mutual fund share classes that resulted in FHC receiving revenue sharing payments, including (for example) when share classes of the same mutual funds were available that did not result in revenue sharing payments to FHC. In addition to the disclosure being inadequate, First Heartland did not put clients on notice of the new disclosure by identifying it as a material change or otherwise.

11. Prior to the SEC investigation, FHC ceased collecting revenue sharing from the Clearing Broker on these mutual funds. First Heartland has since converted client investments, as appropriate, to lower-cost share classes of the same fund.

### **Cash Sweep Revenue Sharing**

12. From at least January 1, 2014, First Heartland made recommendations to clients regarding sweep products to temporarily hold uninvested cash in sweep accounts. A sweep account is a money market mutual fund or bank account used by broker-dealers to hold uninvested cash (*e.g.*, incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money (“Sweep Account”). A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used in Sweep Accounts. The investment yields and expense ratio of a money market fund will differ from fund to fund.

13. Since at least January 1, 2014, Clearing Broker agreed to share with FHC a portion of the revenue Clearing Broker received in connection with certain money market funds offered to sweep accounts. Under this arrangement, Clearing Broker provided FHC with a list of more than 150 money market funds offered as sweep account options for First Heartland’s advisory clients. The amount of revenue sharing FHC received varied depending on the money market fund recommended by First Heartland and selected by advisory clients.

14. First Heartland had a conflict of interest when recommending certain money market funds to its clients: it had an incentive to recommend cash sweep products that resulted in FHC receiving revenue sharing as opposed to investments that did not. Moreover, the money market funds available on Clearing Broker’s platform that resulted in FHC receiving the most revenue sharing generally charged higher fees and returned lower investment yields to clients. Conversely, the money market funds available on Clearing Broker’s platform that resulted in no or lower revenue sharing to FHC generally charged lower fees and returned higher investment yields to clients.

15. Since at least January 1, 2014, at least 98% of First Heartland’s advisory clients had their uninvested cash in money market funds that paid revenue sharing. First Heartland’s account opening worksheet listed only money market funds that resulted in the highest revenue sharing payments without advising clients that FHC would receive revenue sharing or that there were lower-cost and higher-yielding money market fund options available.

16. From January 1, 2014 to March 27, 2017, First Heartland did not disclose in its Forms ADV or otherwise that its affiliated broker received revenue sharing from Clearing Broker on clients’ investments in Sweep Accounts. On March 28, 2017, First Heartland disclosed in its Brochure that its affiliated broker was “eligible to receive revenue sharing participation on assets held in money market funds.” As with other mutual fund revenue sharing, it disclosed: “Clients are hereby notified that in such an arrangement there always exists the possibility of a conflict of interest. This conflict is controlled by always basing investment decisions on the individual needs of our clients.”

17. In none of its disclosures did First Heartland provide full and fair disclosure of all material facts regarding its conflicts of interest that arose when it invested advisory clients in a money market fund that resulted in revenue sharing payments to FHC, including that lower-cost and higher-yielding money market funds were available that would provide no or less revenue sharing. In addition, First Heartland did not put clients on notice of the new disclosure by identifying it as a material change or otherwise.

18. Prior to the SEC investigation, First Heartland converted advisory clients' sweep account holdings to investments that did not pay revenue sharing, which were also lower-cost and higher-yielding money market funds.

### **Fee Mark-Ups**

19. In February 2009, FHC negotiated a Fully Disclosed Clearing Agreement ("FDCA") with Clearing Broker that, among other things, set forth the amounts FHC paid Clearing Broker for providing execution, clearing, and custody for FHC's brokerage customers, many of whom were also advisory clients of First Heartland. The FDCA allowed FHC to pass on to brokerage customers various brokerage charges – called "rebillable fees." Not only could these fees be passed on to FHC's customers, FHC could add a "customized mark-up." The FDCA provided that FHC was responsible for notifying investors of these brokerage fees.

20. From at least January 2014, FHC instructed the Clearing Broker to charge fees to its customers that included customized mark-ups that benefited FHC. During this period, First Heartland used Clearing Broker as its preferred clearing broker and custodian, and nearly all of its advisory clients used Clearing Broker for clearing and custody. First Heartland's advisory clients paid the fee mark-ups, and Clearing Broker credited the mark-ups to First Heartland's affiliate's account with Clearing Broker.

21. For example, Clearing Broker charged \$0.75 for statements while FHC charged an additional \$1.25 for a total fee of \$2.00. First Heartland provided its advisory clients an FHC clearing fee schedule that stated: "Your . . . brokerage account custodied at [Clearing Broker] may be assessed the following fees for the services detailed below." The schedule listed this \$2.00 fee as a FHC miscellaneous account fee for "Paper Surcharge Fee – Per Statement." Additionally, clients' monthly statements listed the fee as a "Paper Surcharge – Statement." First Heartland failed to inform its clients in these disclosures or any others about its conflicts of interest associated with FHC receiving a portion of the fees.

22. At no point did First Heartland disclose to clients that its affiliated broker received fee mark-ups. First Heartland's Brochures never mentioned brokerage fee mark-ups, and the wrap-fee program brochure disclosed only:

Other costs that may be assessed to you and that are not part of the [wrap-fee program] total fee include fees for portfolio transactions executed away from [Clearing Broker], dealer mark-ups, electronic fund and wire transfers, spreads paid to market-makers and exchange fees, among others.

On March 29, 2019, First Heartland updated its wrap-fee program brochure. Clients were now told that fee mark-ups “create a conflict of interest, because the additional income to be earned is an incentive to make recommendations that carry with them the additional compensation.” First Heartland still did not provide full and fair disclosure of its conflicts of interest. For example, the disclosures did not clarify that FHC did, in fact, receive a portion of brokerage fees, or that this practice constituted a conflict of interest.

### **Best Execution Failures**

23. An investment adviser’s fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.<sup>2</sup>

24. By causing certain advisory clients to invest in share classes of mutual funds that resulted in revenue sharing payments from Clearing Broker when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, First Heartland violated its duty to seek best execution for those transactions.

### **Compliance Deficiencies**

25. During the relevant periods of conduct described above, First Heartland failed to adopt and implement written compliance policies and procedures reasonably designed to prevent

---

<sup>2</sup> See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 (“Exchange Act”) and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

violations of the Advisers Act and the rules thereunder in connection with mutual fund share class and money market fund selection practices, fee mark-ups, and related disclosures.

### **Remedial Efforts**

26. In determining to accept the Offer, the Commission considered the remedial acts undertaken by First Heartland.

### **Violations**

27. As a result of the conduct described above, Respondent willfully<sup>3</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scierter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

28. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Disgorgement**

29. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles, does not exceed Respondent’s net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Exchange Act.

---

<sup>3</sup> “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act, “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

## Undertakings

30. Respondent will do the following:

### Steps Taken to Date

- a. Respondent has certified that it has reviewed and corrected as necessary all relevant disclosure documents concerning mutual fund share class and money market fund selection, revenue sharing, and fee mark-ups.
- b. Respondent has certified that it has evaluated whether existing clients should be moved to a lower-cost share class or fund and has moved clients as necessary.
- c. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraphs 30.a through 30.b above.

### Steps to be Taken

- d. Within thirty (30) days of the entry of this Order, Respondent shall evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with mutual fund share class and money market fund selection, revenue sharing, and fee mark-ups.
- e. Within thirty (30) days of the entry of this Order, Respondent shall notify affected advisory clients (*i.e.*, those former and current clients who were financially harmed by the practices detailed above (hereinafter, "affected advisory clients")) of the settlement terms of this Order by sending a copy of this Order to each affected advisory client via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
- f. Within forty (40) days of the entry of this Order, Respondent shall certify, in writing, compliance with the undertaking(s) set forth in paragraphs 30.d through 30.e above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The certification and supporting material shall be submitted to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.
- g. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings set forth in paragraphs 30.d through



30.f above. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

#### IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$1,045,528.32 as follows:

(i) Respondent shall pay disgorgement of \$745,941.91, prejudgment interest of \$99,586.41, and a civil penalty of \$200,000.00, consistent with the provisions of this Subsection C.

(ii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected advisory clients. Amounts ordered to be paid as civil penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(iii) Within ten (10) days of the entry of this Order, Respondent shall deposit \$1,045,528.32 (the "Fair Fund"), into an escrow account at a financial institution

not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(iv) Respondent shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(v) Respondent shall distribute from the Fair Fund to each affected advisory client an amount representing the financial harm during each relevant period by the practices discussed above, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. If there are insufficient funds to fully compensate affected advisory clients for these amounts, the Fair Fund will be distributed to affected advisory clients in a *pro rata* fashion. If sufficient funds are available, reasonable interest will be paid on such amounts. The Calculation shall be subject to a *de minimis* threshold that is approved by the Commission staff. No portion of the Fair Fund shall be paid to any affected advisory client account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vi) Respondent shall, within thirty (30) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vii) Respondent shall, within ninety (90) days of the written approval of the Calculation by the Commission staff, submit a payment file (the “Payment File”) for

review and acceptance by the Commission staff demonstrating the application of the methodology to each affected advisory client. The Payment File should identify, at a minimum: (1) the name of each affected advisory client; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid, if applicable.

(viii) Respondent shall disburse all amounts payable to affected advisory clients within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in paragraph (xii) of this Subsection C. Respondent shall notify the Commission staff of the date[s] and the amounts paid in the distribution.

(ix) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected advisory client or a beneficial owner of an affected advisory client's account or any other factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in paragraph (xi) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying First Heartland Consultants, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide.

(x) A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund’s status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding payments to affected advisory clients, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act. Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xi) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected advisory clients, Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected advisory clients in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 30.d through 30.f above.

By the Commission.

Vanessa A. Countryman  
Secretary