UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11083 / July 18, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20931

In the Matter of

EQUITABLE FINANCIAL LIFE INSURANCE COMPANY,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") against Equitable Financial Life Insurance Company ("Equitable" or "Respondent").

II.

In anticipation of the institution of these proceedings, Equitable 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 them and the subject matter of these proceedings, which are admitted, Equitable consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. Since at least 2016, Equitable provided quarterly account statements to approximately 1.4 million investors that included materially misleading statements and omissions concerning significant fees paid in connection with variable annuity investments. Most of the investors who received the account statements are teachers or other employees of kindergarten-through-twelfth-grade ("K-12") public school districts, who invest in Equitable's proprietary "EQUI-VEST" variable annuities within a 403(b) or 457(b) defined contribution retirement plan.

2. Equitable presented fees in several sections of its EQUI-VEST variable annuity account statements, including dollar values spread across various columns and rows, creating the false impression that all fees investors paid during the period were being detailed in the account statements. Equitable's account statements, however, excluded the most significant fees that investors paid from the fees listed on the account statements. Instead, the account statements listed as fees only certain types of administrative, transaction and plan operating fees—most often amounting to zero or a very small number—which were in fact only a slight fraction of the overall fees paid by the investor. As a result, and as discussed in more detail below, Equitable violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Respondent

3. **Equitable** is a New York company with its principal place of business in New York, New York. It is an insurance company that enters into variable annuity contracts with investors, issuing quarterly account statements to them. Prior to June 2020, Equitable was named AXA Equitable Life Insurance Company.

Equitable's EQUI-VEST Product

4. Equitable offers several versions of a variable annuity under the name "EQUI-VEST" that it markets as a retirement savings product. Each version of the EQUI-VEST variable annuity has distinct contract terms and fees that are described in a prospectus. Generally speaking, for each EQUI-VEST variable annuity, the investor makes an initial investment and usually also makes additional periodic investments thereafter, while Equitable agrees to make periodic payments to the investor at retirement that correspond, at least in part, to the performance of subaccounts that invest in certain underlying mutual fund investments.

5. Equitable markets EQUI-VEST variable annuities as a retirement product to retail investors nation-wide and in particular focuses its marketing efforts on K-12 school teachers who

invest in the variable annuities through the 403(b) or 457(b) defined contribution retirement plan[1] sponsored by their respective school district employer. Since 2016, approximately 60 to 65% of Equitable's annual revenue from EQUI-VEST variable annuities originated from investments made by teachers or other employees of K-12 public school districts.

6. Since at least 2016, and as disclosed in detail in the prospectus for each EQUI-VEST variable annuity, investors in Equitable's EQUI-VEST variable annuities have incurred several types of fees that include the following:

> Separate Account Expenses: These are paid by most EQUI-VEST investors on an ongoing basis for mortality and expense risks associated with the variable annuity and administrative and financial accounting costs. Equitable deducts Separate Account Expenses on a daily basis at an annual rate ranging from approximately 0.10% to 1.49% of net assets in the variable investment options. At contract inception, Equitable provides to investors a variable annuity certificate that provides the exact annual rate charged for Separate Account Expenses.
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> Portfolio Operating Expenses: These are paid by all EQUI-VEST investors on an ongoing basis and are charged by the investment funds underlying the variable annuity—which include proprietary portfolios and funds offered by Equitable affiliates as well as non-proprietary portfolios and funds offered by third parties—for management fees, 12b-1 fees for the marketing and selling of mutual fund shares, service fees, and/or other expenses. The underlying investment funds deduct Portfolio Operating Expenses on a daily basis at an annual rate ranging from approximately 0.55% to 2.26% of the amount invested in such investment funds.
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> Administrative and Transaction Fees: Once per year, approximately sixty percent of EQUI-VEST investors paid Equitable an administrative fee that was no more than, and was typically less than, $30. Whether investors paid that annual administrative fee, and its exact amount, depended on the specific retirement plan through which they invested. If investors engaged in certain transactions, they may have also incurred termination fees, third-party transfer fees, loan origination and maintenance fees, recordkeeping fees, or fees associated with certain optional benefits offered by Equitable.
>
> Plan Operating Expenses: If applicable, Equitable also deducted and paid Plan Operating Expenses to the investor's retirement plan or to a third-party administrator of their retirement plan; most investors did not incur these fees.

[1] A defined contribution retirement plan is a retirement plan to which an employee or the employer (or both) can make regular contributions. 403(b) and 457(b) defined contribution retirement plans are tax-deferred retirement savings programs offered by certain employers, including public school districts.

Equitable Issues Misleading
Account Statements to Variable Annuity Investors

7. Equitable reported fees in four fields within its EQUI-VEST quarterly account statements, but Equitable provided no description in the account statements regarding what these fees included or excluded. Moreover, Equitable did not put the investor on notice of the fact that other fees, including the significant Separate Account Expenses and Portfolio Operating Expenses, were not listed anywhere in the account statements. The investors to whom Equitable provided the account statements included those who considered and made additional investments in EQUI-VEST variable annuities after receiving the account statements.

8. On the front page of all of its EQUI-VEST account statements, Equitable included several line items, including for "Net Investment Portfolio Results," "Total Account Value" and "Fees and Expenses." EQUI-VEST variable annuity prospectuses described that the asset value of the investment reflected fees deducted, including Separate Account Expenses and Portfolio Operating Expenses. Accordingly, the "Net Investment Portfolio Results" and "Total Account Value" line items incorporated all fees paid. However, nothing in the account statement clarified that the prominently displayed "Fees and Expenses" line item did not include all fees and expenses. In reality, the "Fees and Expenses" line item only reported Administrative and Transaction Fees. While many investors incurred an Administrative and Transaction Fee once per year, most did not incur such fees on a quarterly basis. As a result, the quarterly account statements most often reported "Fees and Expenses" on the front page as $0.00 for the quarter, or for both the quarter and year, as shown in the following example:

	This Quarter October 01, 2018 - December 31, 2018	Year to Date	Since Purchase
Beginning Account Value	$52,462.31	$0.00	
Contributions and Additions	$2,100.00	$52,331.52	$52,331.52
Withdrawals	$0.00	$0.00	$0.00
Fees and Expenses	$0.00	$0.00	
Net Investment Portfolio Results	($4,719.70)	($2,488.91)	
Total Account Value	**$49,842.61**	**$49,842.61**	

9. Equitable's quarterly account statements included a separate section entitled "Transaction Summary by Fund." This section included a column entitled "Fees and Expenses" that reported the same Administrative and Transaction Fees as the "Fees and Expenses" line item on the front page of the statement, but on a pro rata basis, broken down by each underlying investment fund within the variable annuity. Again, since most investors did not incur Administrative and Transaction Fees on a quarterly basis and some did not incur them on an annual basis, the quarterly account statements most often repeatedly reported $0.00 in "Fees and Expenses" for each underlying investment fund.

10. The "Transaction Summary by Fund" section also included a column entitled "Plan Operating Expenses." This column reported fees—on a pro rata basis for each underlying investment fund within the variable annuity—that Equitable deducted and paid to the investor's retirement plan or to a third-party administrator of their retirement plan. For most investors, their respective retirement plans did not direct Equitable to deduct such fees and therefore the quarterly account statements most often repeatedly reported $0.00 in "Plan Operating Expenses" for each underlying investment fund. The following is an excerpt from an account statement reporting both $0.00 in "Fees in Expenses" and $0.00 in "Plan Operating Expenses" for each underlying investment fund within the variable annuity:

Transaction Summary by Fund

	Balance as of 10/01/2018	Contributions and Additions	Withdrawals	Fees and Expenses	Net Transfers	Net Investment Portfolio Results	Plan Operating Expenses	Balance as of 12/31/2018
Large Cap								
EQ/Fidelity Instnl AM Lrg Cap	$0.00	$270.00	$0.00	$0.00	$7,832.55	($906.51)	$0.00	$7,196.04
Fidelity VIP Contrafund	$8,422.57	$45.00	$0.00	$0.00	($7,832.55)	($635.02)	$0.00	$0.00

Transaction Summary by Fund *(con't)*

	Balance as of 10/01/2018	Contributions and Additions	Withdrawals	Fees and Expenses	Net Transfers	Net Investment Portfolio Results	Plan Operating Expenses	Balance as of 12/31/2018
Small/Mid Cap								
Fidelity VIP Mid Cap	$5,355.92	$210.00	$0.00	$0.00	$0.00	($1,075.58)	$0.00	$4,490.34
1290 VT GAMCO Small Co Val	$5,383.28	$210.00	$0.00	$0.00	$0.00	($1,032.45)	$0.00	$4,560.83
International Stocks/Global								
EQ/ International Equity Index	$5,007.49	$210.00	$0.00	$0.00	$0.00	($662.87)	$0.00	$4,554.62
Sector/Specialty								
EQ/MFS Technology	$0.00	$90.00	$0.00	$0.00	$2,692.58	($283.75)	$0.00	$2,498.83
MFS Technology	$2,931.83	$15.00	$0.00	$0.00	($2,692.58)	($254.25)	$0.00	$0.00
Guaranteed - Fixed								
Guaranteed Interest Account	$25,361.22	$1,050.00	$0.00	$0.00	$0.00	$130.73	$0.00	$26,541.95
TOTAL PORTFOLIO	**$52,462.31**	**$2,100.00**	**$0.00**	**$0.00**	**$0.00**	**($4,719.70)**	**$0.00**	**$49,842.61**

11. Equitable's EQUI-VEST quarterly account statements also included a section entitled "Contribution and Fee Summary." In addition to detailing contributions made to the variable annuity during the preceding quarter, this section reflected any annual administrative fee or loan maintenance fee that the investor paid. Since few investors incurred such fees quarterly,

the "Contribution and Fee Summary" section most often reported no fees. The following is an example of a "Contribution and Fee Summary" reporting contributions, but no fees:

Contribution and Fee Summary

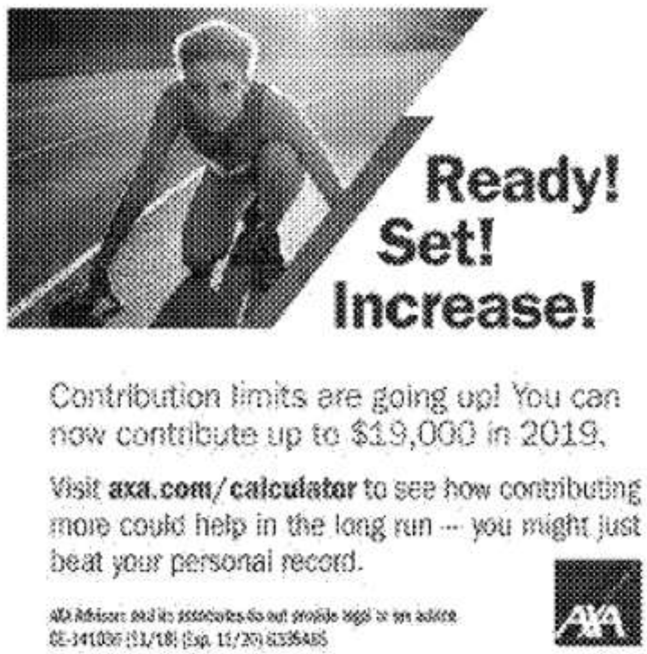
Trade Date	Salary Reduction Date	Transaction Type	Amount	Units
10/01/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5922
10/15/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5846
10/29/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5773
11/12/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5703
11/26/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5644
12/10/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5654
12/24/2019	**Not Provided**	**Contribution**	**$125.00**	
		EQ/Moderate-Plus Allocation	$125.00	0.5541

12. Investors reviewed their Equitable account statements in order to assess the impact that fees were having on their investment and to make decisions concerning their ongoing investments, including whether to make additional investments in EQUI-VEST variable annuities. Because many EQUI-VEST investors never or infrequently incurred Administrative and Transaction Fees or Plan Operating Expenses, and because those were the only types of fees detailed in the quarterly account statements, EQUI-VEST investors most often received quarterly account statements throughout which there were numerous entries stating that the investor paid $0.00 in fees. The account statements contained no clarifying language or reference to the prospectus to explain to investors what these different categories of fees represented or to put the investor on notice of the fact that they instead had paid significant Separate Account Expenses and Portfolio Operating Expenses that could amount to thousands of dollars each year. Though affirmatively presenting an apparently all-inclusive picture of fees and expenses to investors, Equitable's quarterly account statements actually detailed less than three percent of the revenue that Equitable received from the EQUI-VEST variable annuities.

Equitable Encourages Increased
<u>Variable Annuity Investments</u>

13. Equitable's EQUI-VEST variable annuity investors decide on an ongoing basis whether to continue investing in the EQUI-VEST variable annuity and whether to start, stop, increase, or decrease their periodic investment amount. These investors usually make recurring contributions to the EQUI-VEST variable annuities and decide on an ongoing basis how much of their paycheck should be deducted in order to invest in the EQUI-VEST variable annuity. Investors made additional EQUI-VEST investments after Equitable provided them with misleading account statements.

14. In some of the EQUI-VEST quarterly account statements, Equitable encouraged investors to increase their investments in the EQUI-VEST variable annuity. As shown below, the account statements that Equitable issued for the fourth quarter of 2018 included an image of a sprinter preparing to run on a track with the headline "Ready! Set! Increase!" and text underneath that stated, "Contribution limits are going up! You can now contribute up to $19,000 in 2019. Visit axa.com/calculator to see how contributing more could help you in the long run – you might just beat your personal record." Equitable's account statements for the fourth quarter of 2019 contained similar language and encouraged investors to invest more in 2020.



15. The front page of the EQUI-VEST quarterly account statements also frequently contained a seal and statement promoting Equitable to the investor as an "Annuity Service Award Winner."

Equitable Became Aware That Its
<u>Account Statements Are Not Clear</u>

16. Equitable was made aware that its EQUI-VEST account statements may have confused investors on fees paid. In May 2017, Equitable and other vendors met with an advisory committee to the school district with which Equitable did the most business in terms of both assets invested and number of investors ("School District 1"). School District 1 was determining whether to renew contracts with the vendors. During the May 2017 meeting, the chair of the School District 1 advisory committee told Equitable that the account statements were unclear on the amount of fees investors paid.

17. In May 2019, the School District 1 advisory committee held another meeting at which it specifically asked if Equitable could list annuity fees on the front page of its account statements going forward. Equitable agreed to do so as part of a contract that it entered into with

School District 1 covering the period from April 20, 2021 to December 31, 2022. Equitable began listing the Separate Account Expenses and Portfolio Operating Expenses near the end of the account statements for some School District 1 investors in the first quarter of 2020 and for all remaining School District 1 investors by the fourth quarter of 2021.

18. With respect to all other EQUI-VEST investors, including hundreds of thousands of K-12 teachers and administrators employed by hundreds of other school districts located across the nation, Equitable made no changes to the EQUI-VEST account statements that those investors received and instead continued providing them with account statements that reported fees and expenses in the same manner that Equitable had been employing since at least 2016.

Violations

19. As a result of the conduct described above, Equitable violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person in the offer or sale of securities from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make statements made not misleading, and from engaging in any practice or course of business which operates or would operate as a fraud or deceit upon the purchaser, respectively.

Undertakings

20. Notice to Customers.

A. Within sixty (60) days of the entry of this Order, Respondent has undertaken to send a letter to all affected customers (*i.e.*, all current and former customers who invested in EQUI-VEST variable annuities from January 1, 2016 to the date of the entry of this Order (hereinafter, "affected customers")), notifying them of the settlement terms of this Order by sending a copy of this Order via mail or providing immediate access to it via email, hyperlink, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

B. Equitable undertakes to certify, in writing, compliance with the undertaking set forth in Paragraph 20.A above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Equitable agrees to provide such evidence. The certification and supporting material shall be submitted to Hane L. Kim, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616, 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, no later than thirty (30) days from the date of the completion of the undertaking.

21. Modifications to Account Statements.

A. Respondent has undertaken to immediately modify its EQUI-VEST quarterly account statements, beginning with the quarterly account statements that it provides to investors for the period April 1, 2022 through June 30, 2022, in a manner not unacceptable to the Commission staff, that shall:

i. clarify that the fees and expenses detailed in the account statements do not include all fees and expenses that the investor pays pursuant to the variable annuity contract, including ongoing fees and expenses that are described in the variable annuity prospectus;

ii. add a description of terms section that clarifies the types of fees and expenses detailed in the statement;

iii. refer the investor to the disclosure of charges and expenses in the variable annuity prospectus (with the web address at which the prospectus is available) and to the variable annuity certificate; and

iv. rename the "Fees and Expenses" item on the front page of the statements to make clear that it refers only to certain plan administration or transactional fees.

B. Equitable undertakes to certify, in writing, compliance with the undertaking set forth in Paragraph 21.A above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Equitable agrees to provide such evidence. The certification and supporting material shall be submitted to Hane L. Kim, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616, 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, no later than thirty (30) days from the date of the completion of the undertaking.

22. In determining whether to accept the Offer, the Commission has considered these undertakings.

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, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Equitable cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Equitable shall, within ten (10) days of the entry of the Order, pay a civil money penalty in the amount of $50,000,000 as follows:

1. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties described above for distribution to affected customers. Amounts ordered to be paid as civil money 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.

2. Within ten (10) days of the issuance of this Order, Equitable shall deposit $50,000,000 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to Commission staff, and Equitable shall provide evidence of such deposit in a form acceptable to such 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 31 U.S.C. § 3717.

3. Equitable 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.

4. Equitable shall distribute from the Fair Fund to its customers and former customers who invested in EQUI-VEST variable annuities from January 1,

2016 to the date of the entry of this Order (the "Relevant Period"), an amount representing the affected customer's pro rata share of the Fair Fund based on the duration of the affected customer's investment in EQUI-VEST variable annuities during the Relevant Period and the periodic dollar value of the affected customer's investment in EQUI-VEST variable annuities during the Relevant Period, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected customer account in which Respondent, or any of its current or former officers or directors, has a financial interest.

5. Equitable shall, within ninety (90) days of the entry of this Order, submit the proposed 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 B.

6. Equitable shall, within thirty (30) 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 investor. The Payment File should identify, at a minimum, (1) the name of each affected customer; (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. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

7. Respondent shall complete the initial disbursement of all amounts payable to eligible customers within ninety (90) days of the date when Commission staff accepts the Payment File for current customers, and within one hundred eighty (180) days of such date for former customers, unless such time period is extended as provided in Paragraph 11 of this Subsection B. Respondent shall notify the Commission staff of the date[s] and the amount paid in the initial distribution.

8. If funds remain in the Fair Fund after the initial distribution is complete, the Respondent, if feasible and in consultation with the Commission staff, will make one redistribution to each current or former affected customer who received a distribution payment electronically or negotiated a check (subject to a *de minimis* threshold). If Equitable is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected customer or former customer, or a beneficial owner of an affected customer or former customer, or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with section 21F(g)(3) of the Securities Exchange Act of 1934. 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 Equitable as the 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 Hane L. Kim, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616.

9. 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 the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). 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.

10. Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected customers and former customers, including any redistribution pursuant to paragraph 8 of this Subsection B, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection B. The 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 investors 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 Hane L. Kim, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl St., Suite 20-100, New York, NY 10004-2616. 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.

11. The Commission staff may extend any of the procedural dates set forth in this paragraph IV.B for good cause shown. Deadlines for dates relating to the Fair Fund 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 to be the last day.

C. Respondent shall comply with the undertakings enumerated in Section III, Paragraph 21 above.

By the Commission.

Vanessa A. Countryman
Secretary