

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20455**

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| <b>In the Matter of</b> | : |                         |
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| <b>Poloniex, LLC,</b>   | : | <b>PROPOSED PLAN OF</b> |
|                         | : | <b>DISTRIBUTION</b>     |
| <b>Respondent.</b>      | : |                         |
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**I. OVERVIEW**

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Poloniex, LLC (the “Respondent”) in the above-captioned matter, and accrued interest, if any.<sup>1</sup> The Plan seeks to compensate investors harmed by the Respondent’s operation of an unregistered national securities exchange.

2. Based on information obtained by the Commission staff during and after its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that: (1) it has all records necessary to identify harmed investors and to calculate each investor’s harm; and that (2) additional information will be required from the identified harmed investors in order to validate their eligibility and issue distribution payments. As a result, this Plan includes procedures by which the required information will be solicited and evaluated, and a deadline for responses established, in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4).

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for fees paid to transact in the Crypto Assets (defined below) on the Poloniex trading platform between August 1, 2017 and November 30,

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<sup>1</sup> See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Exchange Act Rel. No. 92607 (Aug. 9, 2021) (the “Order”).

2019, inclusive (the “Relevant Period”). In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

4. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

## II. BACKGROUND

5. On August 9, 2021, the Commission issued the Order instituting and simultaneously settling cease-and-desist proceedings against the Respondent. In the Order, the Commission found that from July 2017 through November 2019, Poloniex operated a digital asset trading platform that meets the definition of an “exchange” under the federal securities laws but did not register as a national securities exchange nor operate pursuant to an exemption from registration at any time, in violation of Section 5 of the Securities Exchange Act of 1934. The Commission ordered the Respondent to pay \$8,484,313.99 in disgorgement, \$403,995.12 in prejudgment interest, and a \$1,500,000 civil money penalty to the Commission. The Commission also created the Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid, along with the disgorgement and prejudgment interest paid, can be distributed to harmed investors.

6. The Respondent has paid a total of \$10,388,309.10. The Fair Fund has been deposited at the United States Department of the Treasury and any accrued interest will be added to the Fair Fund.

## III. DEFINITIONS

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

7. “**Administrative Costs**” shall mean all administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Fund Administrator, tax obligations, bond premium expenses, and investment and banking costs.

8. “**Crypto Assets**” means the assets that were listed on the Poloniex platform under the following symbols during the Relevant Period: NAUT, NOTE, SJCX, BELA, BCY, FLDC, FLO, PINK, RADS, BLK, NXC, RIC, XVC, BTCD, BTM, EMC2, GRC, POT, VRC, XBC, NEOS, AMP, EXP, GNO, BCN, GAME, NXT, DCR, GAS, LSK, OMNI, REP, and ARDR.<sup>2</sup>

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

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<sup>2</sup> The inclusion in this Plan of the specified Crypto Assets, all of which were listed on the Poloniex platform during the Relevant Period, is not intended to, and does not, prevent the Commission or its Division of Enforcement from taking the position in any enforcement proceeding or otherwise that any assets listed on the Poloniex platform, whether during the Relevant Period or otherwise, were offered or sold as securities.

10. “**Eligible Claimant**” means a Preliminary Claimant who is not excluded under 11(a)-(f) or an Unresponsive Preliminary Claimant.

11. “**Excluded Party**” shall mean:

- (a) The Respondent;
- (b) Present or former officers or directors of Respondent or any assigns, creditors, heirs, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities;
- (c) Any employee or former employee of the Respondent or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct described in the Order;
- (d) Any firm, trust, corporation, or other entity in which Respondent has or had a controlling interest;
- (e) The Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as the Fund Administrator;
- (f) Any purchaser or assignee of another Person’s claimed 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; and
- (g) Any person who is confirmed by the Fund Administrator to be subject to sanctions by the United States government, as determined by Executive Orders, the authority of the Department of the Treasury’s Office of Foreign Asset Control (OFAC) or any other applicable laws of the United States.

All Preliminary Claimants will be required to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Fair Fund.

12. “**Fair Fund**” means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the benefit of investors harmed by the Respondent’s violations described in the Order. Accrued interest and any additional funds directed to the Fair Fund by Commission or Court Order or otherwise, will be added to, and become a part of, the Fair Fund.

13. “**Final Status Notice**” means the notice sent by the Fund Administrator to all Preliminary Claimants who timely sought to cure deficiencies and/or requested reconsideration of an ineligibility determination, setting forth the Fund Administrator’s determination of the Preliminary Claimant’s eligibility for a distribution. *See* paragraph 47.

14. **“Net Available Fair Fund”** means the Fair Fund less Administrative Costs.
15. **“Payee”** means an Eligible Claimant whose Recognized Loss, calculated, in accordance with the Plan of Allocation, results in a distribution amount equal to or greater than \$10.00 and who is not excluded under paragraph 11(g), who will receive a Distribution Payment.
16. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.
17. **“Plan Notice”** means a written notice from the Fund Administrator to Preliminary Claimants informing them of the Fair Fund, the Plan, the Recognized Loss associated with the email address provided by the Respondent, and its eligibility requirements, and specifying the information that a Preliminary Claimant must provide in order to be considered for eligibility under the Plan. Among other things, the Plan Notice will require Preliminary Claimants to submit additional contact information, payment information, and tax identification information determined necessary by the Fund Administrator, in coordination with the Tax Administrator, to determine a Preliminary Claimant’s eligibility and to facilitate the issuance of Distribution Payments. The Plan Notice will also require Preliminary Claimants to complete an Excluded Party certification (*see* paragraph 11) and may require the submission of a completed tax form. The Plan Notice will provide a date on which responses to the Plan Notice are due. The Plan Notice will be available on the Fair Fund’s website that is maintained by the Fund Administrator.
18. **“Plan of Allocation”** means the methodology used by the Fund Administrator to calculate if an investor has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.
19. **“Preliminary Claimant”** means those Persons, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the Commission staff during and after its investigation, who suffered a Recognized Loss of \$8.00 or more as a result of fees paid to transact in the Crypto Assets on the Poloniex trading platform during the Relevant Period, as calculated pursuant to the Plan of Allocation.
20. **“Preliminary Claimant Status Notice”** means the notice sent by the Fund Administrator to Preliminary Claimants within the time set forth in paragraph 45, advising them as to the sufficiency and/or deficiency of their response to the Plan Notice, and requesting a response from any Preliminary Claimants who have failed to provide one. The Preliminary Claimant Status Notice will provide to each Preliminary Claimant who has provided deficient information, in whole or in part, the reason(s) for each deficiency. The Preliminary Claimant Status Notice will further notify the Preliminary Claimant of the opportunity to provide a response, or to cure any deficiency in a provided response, and will provide instructions regarding what is required to do so.
21. **“Recognized Loss”** means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

22. “**Relevant Period**” means the period of time between August 1, 2017 and November 30, 2019, inclusive.

23. “**Unresponsive Preliminary Claimant**” means a Preliminary Claimant who fails to provide a response to the Plan Notice that is deemed sufficient by the Fund Administrator and/or otherwise fails to respond timely to requests by the Fund Administrator for information.

#### **IV. TAX COMPLIANCE**

24. On September 21, 2021, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.<sup>3</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its agreement with the Commission.<sup>4</sup>

25. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Fair Fund.

26. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

#### **V. FUND ADMINISTRATOR**

27. On June 28, 2022, the Commission appointed KCC Class Action Services, LLC, as the fund administrator for the Fair Fund (the “Fund Administrator”), and the Fund Administrator has obtained a bond in the amount of \$10,388,309.10, as ordered.<sup>5</sup> Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

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<sup>3</sup> See Order Appointing Tax Administrator, Exchange Rel. No. 93083 (Sept. 21, 2021).

<sup>4</sup> See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 85174 (Feb. 22, 2019).

<sup>5</sup> See Order Removing and Appointing Fund Administrator, Setting Bond, and Related Relief, Exchange Act Rel. No. 95172 (June 28, 2022).

28. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to disseminate the Plan Notice to Preliminary Claimants; establishing a website; staffing a call center to address inquiries; creating a digital portal to accept electronic submission of information by Preliminary Claimants; developing a database of Preliminary Claimants and their information based on, among other things, information from the Respondent, the Commission, and responses to the Plan Notice; advising Preliminary Claimants of deficiencies in their responses to the Plan Notice and/or their ineligibility based on their response(s), providing an opportunity to cure any defects or submit a late response, and responding to disputes concerning eligibility and loss amounts; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); taking appropriate antifraud measures; ensuring compliance with any restrictions on making Distribution Payments in accordance with sanctions imposed by the United States government, including those administered by the Office of Foreign Asset Control (OFAC); making determinations under the criteria established herein as to Preliminary Claimant's eligibility for a Distribution Payment; disbursing the Fair Fund in accordance with this Plan and as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

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

30. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

31. The Fund Administrator is authorized to enter into agreements with third-parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third-parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third-parties shall be deemed to be agents of the Fund Administrator under this Plan.

32. The Fund Administrator will be entitled to payment from the Fair Fund of reasonable fees and expenses, including the bond premium, incurred in the performance of its duties, and including any such fees and expenses incurred by agents, consultants or third-parties retained by the Fund Administrator in furtherance of its duties.

## **VI. ADMINISTRATION OF THE FAIR FUND**

### Specification of Preliminary Claimants

33. Using information obtained during and after its investigation and its review and analysis of applicable records, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the

Commission staff during and after its investigation, who suffered a Recognized Loss of \$8.00 or more as a result of fees paid to transact in the Crypto Assets on the Poloniex trading platform during the Relevant Period, as calculated pursuant to the Plan of Allocation.

Procedures for Notifying Preliminary Claimants

34. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will:

- (a) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Fund Administrator, including the last known physical and email addresses and transactional information of Preliminary Claimants.
- (b) Design and submit the Plan Notice to the Commission staff for review and approval;
- (c) Run a National Change of Address search to retrieve updated addresses for all physical addresses in the database to which Plan Notices will be sent by mail, thereby ensuring that the mailing information for Preliminary Claimants is up-to-date;
- (d) Email a Plan Notice to each Preliminary Claimant identified by the Fund Administrator for which an email address has been provided and mail a Plan Notice to all other Preliminary Claimants;
- (e) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan, the Plan Notice, and related materials, in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Preliminary Claimants. The website will also include, as appropriate, a digital portal through which Preliminary Claimants can submit information securely. The website address will be listed on all correspondence from the Fund Administrator to Preliminary Claimants;
- (f) Establish and maintain a toll-free telephone number for Preliminary Claimants to call and speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund. The toll-free number will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website; and
- (g) Establish and maintain a traditional mailing address and an email address that will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website.

35. The Fund Administrator will have available, and use as appropriate in its discretion, translation services in connection with contacts with Preliminary Claimants so that all communications can be as effective as practicable. Translations of the Plan Notice and any other notices or communications issued by the Fund Administrator or the Commission in connection with the distribution may be requested by Preliminary Claimants by contacting the Fund Administrator by mail, email, or the toll-free number.

36. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website, any material mailed, and any scripts used in connection with any communication with investors.

37. The Fund Administrator will attempt to locate any Preliminary Claimant whose email or mail is returned as "undeliverable" and will document all such efforts. The Fund Administrator shall use its best efforts to make use of information provided by the Commission staff, commercially available resources, and other reasonably appropriate means to obtain updated contact information in response to "undeliverable" notices; and will send by email or mail, as appropriate, any undeliverable emails or mail for which updated contact information is provided or obtained. The Fund Administrator will make available, upon request by the Commission staff, a list of all Preliminary Claimants whose Plan Notice have been returned as "undeliverable" due to incorrect addresses and for which the Fund Administrator has been unable to locate current contact information.

38. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for Persons whose mailings are returned as undeliverable.

#### Procedures to Request Plan Notice

39. Any Person who does not receive a Plan Notice, as described in paragraph 34(d), but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes he, she, or it should be included as a Preliminary Claimant, should contact the Fund Administrator within sixty (60) days of Plan approval, providing all documentation necessary to establish that he, she, or it should be considered a Preliminary Claimant. The Fund Administrator will send the Person a Plan Notice by e-mail within fifteen (15) days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice, as provided in paragraph 34(d), and allow the Person the later of thirty (30) days from the date the Fund Administrator sends the Plan Notice or the due date for the responses to the Plan Notice set forth in paragraph 40.

#### Responses to the Plan Notice

40. Responses to the Plan Notice, including any disputes, will be due sixty (60) days from the date of its initial mailing. Preliminary Claimants will be encouraged to respond to the Plan Notice through an online process; the Plan Notice will include instructions on how Preliminary Claimants can submit their responses electronically via the Fair Fund's website. Preliminary Claimants must submit his, her, or its claim to the Fund Administrator by 11:59 p.m.



(PST) on the due date specified in the Plan Notice. The Plan Notice will also include instructions for submission of responses if the Preliminary Claimant is unable to submit his, her, or its responses electronically; any such response must be received by the Fund Administrator by 11:59 p.m. (PST) on the due date specified in the Plan Notice.

41. The burden will be upon the Preliminary Claimant to ensure that his, her or its response to the Plan Notice has been properly and timely received by the Fund Administrator.

42. All responses to the Plan Notice necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be verified by a declaration executed by the Preliminary Claimant under penalty of perjury under the laws of the United States. The Preliminary Claimant must execute the declaration, unless the Fund Administrator accepts such declaration from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems necessary.

#### Changes in Contact Information

43. The Preliminary Claimant has the burden of notifying the Fund Administrator of a change in his, her or its current address and other contact information, and of ensuring that such information is properly reflected on the Fund Administrator's records.

#### Review of Responses to the Plan Notice and Deficiency Process

44. The Fund Administrator will review all responses to the Plan Notice for sufficiency. The Fund Administrator will have the right to request, and the Preliminary Claimant will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed necessary by the Fund Administrator.

45. The Fund Administrator will provide a Preliminary Claimant Status Notice within ninety (90) days of the due date for responses to the Plan Notice to each Preliminary Claimant, advising them as to their current eligibility or ineligibility for a distribution under the Plan, including the sufficiency and/or deficiency of their response to the Plan Notice. The Preliminary Claimant Status Notice will provide to each Preliminary Claimant whose response to the Plan Notice is deficient, in whole or in part, and/or for whom the Fund Administrator does not have sufficient information to, among other things, determine eligibility and/or issue a Distribution Payment, the deficiencies (e.g., failure to provide required information or documentation) and/or missing information. The Preliminary Claimant Status Notice will further notify the Preliminary Claimant of the opportunity to provide a response if they have failed to do so, or to cure any deficiency in a provided response and will provide instructions regarding what is required to do so.

46. Any Preliminary Claimant who has been determined ineligible, and/or failed to provide a response to the Plan Notice or provided a deficient response will have thirty (30) days from the date of the Preliminary Claimant Status Notice to cure any deficiencies identified in the Preliminary Claimant Status Notice and/or to submit a request for reconsideration of ineligibility.

47. Within thirty (30) days of the response date to the Preliminary Claimant Status Notice, the Fund Administrator will send a Final Status Notice to Preliminary Claimants who sought reconsideration and/or sought to cure deficiencies in their Plan Notice response.

48. The Fund Administrator will have the authority, in its sole discretion, to waive technical deficiencies and determine eligibility on a case-by-case basis or otherwise.

#### Distribution Methodology

49. Any Preliminary Claimant who is not excluded under paragraph 11(a)-(f) or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

50. All Eligible Claimants whose Recognized Loss, calculated in accordance with the Plan of Allocation, results in a Distribution Payment equal to or greater than \$10.00 and who are not excluded under paragraph 11(g), will be deemed a Payee.

51. Payees will be identified, and Distribution Payments determined, in accordance with the methodology as set forth in the Plan of Allocation.

52. There may be one or more distributions under the Plan in accordance with paragraph 78.

#### Establishment of a Reserve

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

54. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 79.

#### Preparation of the Payment File

55. Within sixty (60) days following the date of the Final Status Notices described in paragraph 47, the Fund Administrator will compile and send to the Bank (defined below, paragraph 57) a list of Eligible Claimants whose calculated Distribution Payment is equal to or greater than \$10.00 in order to determine their eligibility under paragraph 11(g). Upon identifying those Eligible Claimants potentially excluded under paragraph 11(g), the Fund Administrator will take all steps that it deems necessary to confirm whether the paragraph 11(g) exclusion applies to those Eligible Claimants.

56. Within one hundred fifty (150) days following the date of the Final Status Notices described in paragraph 47, the Fund Administrator will compile and send to the Commission staff a list of Payees information (the "Payee List"). The Fund Administrator will also provide a

Reasonable Assurances Letter to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment(s); (c) includes the number of Payees compensated; (d) reflects the percentage of the Payee's Recognized Loss being compensated by the disbursement from the Fair Fund, and, if applicable, the total percentage compensated including all prior disbursements; (e) is accurate as to the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

### The Escrow Account

57. Prior to the disbursement of funds from the Net Available Fair Fund, the Fund Administrator will establish an escrow account (the "Escrow Account") with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. 208.43 and that is not unacceptable to the Commission staff (the "Bank"), pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff.

58. The Fund Administrator, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (e.g. controlled distribution account, managed distribution account, linked checking and investment account) (the "Distribution Account"), insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

59. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the "Escrow Property"), shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be of a type and term necessary to meet the cash liquidity requirements for payments to Payees, tax obligations, and/or fees of the Tax Administrator and/or Fund Administrator, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

60. The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

61. The Fund Administrator shall deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Distribution Account.

62. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Fund Administrator, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

#### Distribution of the Fair Fund

63. The Fund Administrator will seek to distribute the Net Available Fair Fund to all Payees only after all responses to the Plan Notice have been processed and all Preliminary Claimants whose responses have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth herein.

64. Upon the Commission's staff's receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will seek an Order from the Commission pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 210.1101(b)(6), to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission Order.

65. Upon issuance of an Order to disburse, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank.

66. Upon The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect payments within ten (10) business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

67. The Fund Administrator will issue all Distribution Payments from the Distribution Account. All checks will bear a stale date of one hundred twenty (120) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 75.

68. All payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one hundred twenty (120) days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

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

70. Distribution Payments must be made by check, electronic payment, or other payment method with the approval of the Commission staff. The Distribution Payment will be made payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Fund Administrator in consultation with the Commission staff and must be authorized by the Payee. Compensation to a Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

71. The submission of a response to the Plan Notice and the receipt and acceptance of a Distribution Payment by a Payee are not intended to be a release of a Payee's rights and claims against the Respondent.

72. Checks, electronic payments, or other payment method with the approval of the Commission staff, may be utilized at the discretion of the Fund Administrator. Electronic payments will be initiated by the Fund Administrator using a two-party check and balance system, whereby completion of a disbursement and/or payment will require an authorization by two members of the Fund Administrator's senior staff.

73. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

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

74. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable" or whose payment did not go through. If new address or payment information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address, or resend the electronic or other payment. If new address or payment information is not available after a diligent search and outreach (and in no event no later than one hundred twenty (120) days after the initial mailing of the original check or issuance of the payment) or if the distribution check, payment, or disbursement is returned or rejected again, the check shall be voided, and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check or terminate the electronic or other payment. If the Fund Administrator is unable to find a Payee's correct address or payment information, or if despite best efforts, payment is impractical due to geopolitical conditions including but not limited to federal sanctions, war, natural or manmade disasters, the Fund Administrator, in consultation with the Commission staff, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

75. The Fund Administrator will reissue checks or electronic or other payments to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date on the check or one hundred twenty (120) days of the initial payment date. In cases where a Payee is unable to endorse a Distribution Payment check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and/or the Payee or a lawful representative requests the reissuance of a Distribution Payment check or electronic or other payment in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn or reissued Distribution Payment to the requesting party. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check or other payment or disbursement be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of Commission staff.

76. The Fund Administrator will make reasonable efforts to contact Payees who have failed to negotiate and/or receive a Distribution Payment and take appropriate action to follow up on the status of uncashed checks or payments or disbursements that do not reach the intended recipient. The Fund Administrator may reissue such checks, payments, or disbursements subject to the time limits detailed herein.

#### Administrative Costs

77. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission's Rules.

#### Disposition of Undistributed Funds

78. If funds remain following the initial distribution and payment of all Administrative Costs, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution of any available remaining funds pursuant to the Commission's Rules.

79. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the "Residual"). The Residual may include funds from, among other things, amounts remaining the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties.

80. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission.

### Filing of Reports and Accountings

81. In accordance with Rule 1105(f) of the Commission's Rules, the Fund Administrator shall provide to the Commission staff a progress report and a quarterly account statement in a format to be provided by Commission staff, within forty-five (45) days of the Commission's approval of the Plan, and shall provide to Commission staff additional reports and quarterly account statements within ten (10) days after the end of every calendar quarter. Such progress reports shall inform the Commission staff of the activities and status of the Fair Fund during the reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Fair Fund, including among other things, an interim accounting of all monies in the Fair Fund.

82. When the final distribution is completed, the Fund Administrator shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Fund Administrator shall arrange for the final payment of all Administrative Costs, and submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan in a format provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

### Termination of the Fair Fund

83. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Fair Fund has been returned to the Commission for transfer to U.S. Treasury. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of any amounts remaining in the Fair Fund that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that are infeasible to return to investors, to the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; (c) cancellation of the Fund Administrator's bond; and (d) termination of the Fair Fund.

84. Once the Fair Fund has been terminated and funds, if any, are transferred to the U.S. Treasury, no additional payments will be made whatsoever.

### Miscellaneous

85. When administering this Plan, the Fund Administrator, and/or each of its designees, agents and assigns, may rely on: all applicable law; orders issued by the Commission, including orders issued by delegated authority; orders issued by an administrative law judge, if any, appointed in this proceeding; and any records, including records containing investor information, provided by Commission staff.

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

#### Wind-down and Document Retention

87. The Fund Administrator will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

88. The Fund Administrator will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (6) years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the Commission staff's direction, the Fund Administrator will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

### **VII. NOTICE AND COMMENT PERIOD**

89. The Notice of Proposed Plan of Distribution and Opportunity to Comment (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 of the publication 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](http://www.sec.gov/litigation/admin.shtml)); or (c) by sending an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-20455" in the subject line. Comments received will be available to the public. 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 fees paid in connection with transactions in the assets that were listed on the Poloniex platform during the period between August 1, 2017 through November 30, 2019, inclusive (the “Relevant Period”) under the following symbols: NAUT, NOTE, SJCX, BELA, BCY, FLDC, FLO, PINK, RADS, BLK, NXC, RIC, XVC, BTCD, BTM, EMC2, GRC, POT, VRC, XBC, NEOS, AMP, EXP, GNO, BCN, GAME, NXT, DCR, GAS, LSK, OMNI, REP, and ARDR (the “Crypto Assets”). Investors who did not pay fees in connection with transactions in the Crypto Assets on the Poloniex trading platform during the Relevant Period are ineligible to recover under this Plan. Based upon records obtained by the Commission during and after its investigation, the Fund Administrator has identified those investors, or their lawful successors, who suffered a Recognized Loss of \$8.00 or more as a result of transactions in the Crypto Assets on the Poloniex trading platform during the Relevant Period (the “Preliminary Claimants”).

“Recognized Loss” will be calculated as the sum of the fees the Preliminary Claimant paid in connection with transactions in some or all of the Crypto Assets on the Poloniex trading platform during the Relevant Period, as recorded in documents obtained from the Respondent.

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator.

Any Preliminary Claimant who is not excluded under paragraphs 11(a)-(f) or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: If the Net Available Fair Fund, as defined in the Plan, is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its Recognized Loss, plus “Reasonable Interest” if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata* Percent” of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the “Minimum Distribution Amount.”

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants his, her, or its Recognized Losses, the Fund Administrator, in consultation with the Commission staff, may include reasonable interest in the distribution amount to compensate Eligible Claimants for the time value of his, her, or its respective Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant’s Reasonable Interest amount will be his, her or its *Pro Rata* Percent of the excess funds.

Pro Rata Percent: A *Pro Rata* Percent computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Fund Administrator shall determine each Eligible Claimant's *Pro Rata* Percent as the ratio of the Eligible Claimant's Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants that have distribution amounts that are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant that has a distribution amount that equals or exceeds the Minimum Distribution Amount and who is not excluded under paragraph 11(g) of the Plan will be deemed a Payee and receive a Distribution Payment for his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than the Payee's Recognized Loss, plus Reasonable Interest, if applicable.

Currency: Calculations pursuant to this Plan of Allocation will be made in U.S. dollars. Fees paid will be converted to U.S. dollars as of the transaction date. Distribution Payments will also be made in U.S. Dollars.