

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE
COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6110 / September 8, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21047

In the Matter of

**NPA Asset Management,
LLC,**

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 NPA Asset Management, LLC (“NPA,” “Respondent,” or the “Firm”).

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 Advisers Act, 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 that:

Summary

1. This proceeding arises from securities law violations by NPA, a registered investment adviser, that were first identified by staff of the Commission's Division of Examinations ("EXAMS") in September 2019 and which the Firm subsequently failed to remediate in an adequate manner. First, from at least April 2017 through December 2019, NPA maintained fee-based advisory accounts without monitoring or conducting reviews for account suitability, contrary to representations in its Form ADV Brochures and in breach of NPA's duty of care under the Advisers Act. Prior to October 2019, NPA also failed to adopt policies or procedures regarding both the determination of advisory account suitability at the time of account opening and ongoing monitoring for account suitability. As a result, from at least April 2017 through December 2019, NPA collected management fees on hundreds of advisory accounts for which suitability monitoring did not occur and in which minimal, if any, trading activity occurred (i.e., "inactive accounts"). In 2018-19, EXAMS conducted an examination of NPA that resulted in a September 2019 deficiency letter (the "Deficiency Letter") and that identified, among other issues, inactive and high-cash balance accounts as potential suitability concerns. In October 2019, following its receipt of the Deficiency Letter, NPA adopted a policy concerning account suitability that includes a requirement for the Firm to review inactive accounts and accounts with high-cash balances. NPA, however, failed to implement this policy in an adequate manner.

2. In addition, since April 2017, NPA has engaged in approximately 158 fixed income transactions and 220 sales of certain real estate investment trust ("REIT") products through the principal account of its affiliated broker-dealer without providing advanced written notice or obtaining the required client consents.

3. Finally, NPA failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder concerning account suitability and monitoring, principal trading, and the accuracy of its client disclosures.

4. As a result of this conduct, NPA willfully violated Section 206(2), Section 206(3), and Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

5. NPA is a New Jersey corporation with its principal place of business in Paramus, New Jersey. NPA has been registered with the Commission as an investment adviser since 2006. NPA has approximately 60 individual investment adviser representatives ("IARs"), as of its ADV filing for the year 2021, manages approximately 2,800 advisory accounts, and has approximately \$905 million in regulatory assets under management. NPA's IARs are also

registered representatives (“RRs”) of NPA’s affiliated broker-dealer, Nationwide Planning Associates, Inc.

Other Relevant Entity

6. **Nationwide Planning Associates, Inc. (“Nationwide”)** is a New Jersey corporation that has been registered with the Commission as a broker-dealer since November 18, 1992. Nationwide shares an address, 115 West Century Road Suite 360, Paramus, NJ 07652, with NPA. Nationwide has approximately 70 individual RRs, approximately 60 of whom are also IARs of NPA, and has approximately 17,000 customer accounts.

Failure to Monitor Accounts for Suitability as Represented

7. Between April 2017 and December 2019, NPA had approximately 2,000 advisory accounts for which it charged advisory fees. In its Form ADV Brochures since at least the fiscal year 2017, NPA represented that both the Firm and individual representatives would “continuously monitor client portfolios” and conduct account reviews for, among other things, “suitability, inactivity, and high concentrations in individual securities.”¹ NPA’s client agreements have similarly represented that NPA would provide clients with investment advisory services that include account monitoring. In fact, however, until December 2019, NPA did not conduct such reviews.

8. During the period of NPA’s failure to monitor for account suitability, hundreds of NPA’s advisory accounts were inactive. Specifically, during the eighteen months from April 1, 2017 through September 30, 2018, approximately 22% of NPA’s approximately 1,900 advisory accounts had five or fewer transactions; approximately 8% had no transactions. From July 1, 2018 through December 31, 2019, approximately 27% of NPA’s approximately 2,100 advisory accounts had five or fewer transactions; approximately 9% had no transactions. During this time, NPA collected advisory fees on these accounts, generally charging between 0.4% and 2.4%. Of the fees collected, NPA paid out approximately 84% to its IARs.

9. From at least April 2017 through mid-October 2019, NPA had no written policies or procedures in place concerning the determination of the suitability of advisory accounts at the time of account opening or monitoring for account suitability.

¹ Investment advisers use a three-part form called Form ADV to register with the Commission as well as with the relevant state securities authorities. Part 2 of Form ADV is the primary disclosure document for registered investment advisers, which is further divided into Part 2A (also known as the Brochure) and Part 2B (also known as the Brochure Supplement). Part 2A of Form ADV requires registered investment advisers to prepare plain English disclosures of, among other things, the adviser’s fees and conflicts of interest. Registered investment advisers are required to deliver a brochure containing all of the information required by Part 2A of Form ADV to clients, which is also made available to the public on the SEC’s website.

Duty of Care Failure

10. An investment adviser's fiduciary duty includes a duty of care that requires the adviser to determine whether a client's account type is suitable. In an ongoing advisory relationship, this duty of care requires that an adviser conduct periodic monitoring of client accounts for suitability.

11. NPA failed to monitor inactive accounts to determine whether a fee-based advisory account was in the best interest of each client.

Failure to Implement Suitability Policy

12. In October 2019, after receiving the Deficiency Letter, NPA adopted a policy concerning account suitability. The policy states that NPA has a fiduciary duty to "consider whether an investment advisory management fee arrangement is suitable and appropriate for the customer prior to entering into the arrangement and on an on-going basis thereafter." The policy also requires that NPA conduct semi-annual reviews of all advisory accounts that include, among other things, reviews for "[r]everse churning/inactive accounts" (defined as an account with five or fewer transactions over the previous 18 months) and high-cash balances (defined as accounts maintaining a balance of 40% or more in cash).

13. NPA failed to implement its suitability policy in a manner reasonably designed to prevent violations of the Advisers Act and the rules thereunder. As an initial matter, when adopted, the suitability policy was not accompanied by training for IARs on the new policy and, the policy itself was not distributed to the NPA's IARs. The policy calls for the review of inactive accounts "to ensure they are receiving adequate advisory services and would not be better off as brokerage accounts." Although the reviews called for by the policy have taken place at regular intervals since December 2019, in conducting the reviews, there is no evidence that NPA considered whether the clients would be "better off" in brokerage accounts, as required by the policy. Instead, NPA's reviews appear to have consisted of having the IARs confirm that advisory services were being provided to the clients, a determination that was not made in accordance with any written or otherwise objective criteria. NPA's implementation of high-cash balance reviews has been similarly inadequate. There is no evidence that NPA's reviews of these accounts considered whether a fee-based advisory account was suitable for clients with high-cash balances, even with respect to the cash portion of their accounts.

Principal Trade Violations

14. From April 1, 2017 through December 31, 2021, NPA engaged in fixed income trades with advisory clients in a "riskless principal" capacity by executing those client trades through the principal account of its affiliated broker-dealer, Nationwide. NPA engaged in approximately 158 such transactions without providing advance written disclosure or obtaining client consent. Although the Deficiency Letter noted NPA's potential principal trade violations, NPA failed to adequately remediate the issue and the Firm continued to engage in prohibited principal transactions through December 2021. NPA earned approximately \$8,269.99 in

markups/markdowns through these principal transactions.

15. From April 2017 through March 2020, NPA also executed approximately 220 sales of certain REITs to NPA clients through the principal account of Nationwide. Clients were not provided with written notice of and did not consent to Nationwide acting in a principal capacity with respect to these transactions.

16. In addition, in its Forms ADV from at least 2017 through March 2019, NPA answered “no” to the question asking whether NPA engaged in principal transactions.

Compliance Failures

17. Since at least April 2017, NPA failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with (i) account suitability determinations and reviews; (ii) principal trades, including REIT sales; and (iii) the accuracy of its disclosures to clients.

Violations

18. As a result of the conduct described above, NPA willfully² violated Section 206(2) of the Advisers Act, which makes it unlawful “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 may rest upon 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, 194-195 (1963)).

19. As a result of the conduct described above, NPA willfully violated Section 206(3), which prohibits an adviser from “acting as principal for his own account, knowingly to sell any security or to purchase any security from a client . . . without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.” Scierter need not be shown to establish a Section 206(3) violation. *Marc N. Geman*, Advisers Act Rel. No. 1924, 2001 WL 124847, at *8 (Feb. 14, 2001).

20. As a result of the conduct described above, NPA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require, among other things, that an investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. A violation of Section 206(4) and the rules thereunder does not require scierter. *Steadman*, 967 F.2d at 647.

² “Willfully,” for purposes of imposing relief under Sections 203(e) and 203(f) 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).

Disgorgement

21. The disgorgement and prejudgment interest ordered in Paragraph IV.E. are consistent with equitable principles and 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 U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

22. Respondent has undertaken to:
- a. Within thirty (30) days of the entry of this Order, notify the following affected investors of the settlement terms of this Order in a clear and conspicuous fashion: (i) those former and current clients who, from April 2017 through December 2019, paid advisory fees on inactive accounts; and (ii) those clients who, from April 2017 through December 2021, did not receive advance written notice of or provide consent to principal transactions (hereinafter, collectively, "affected investors").
 - b. Within forty (40) days of the entry of this Order, certify, in writing, compliance with the undertaking set forth 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Judith Weinstock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616 with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549.
 - c. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. 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 to be 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 NPA's Offer.

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

A. Respondent NPA shall cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in Paragraph 22 above.

D. NPA shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the "Independent Consultant") that is not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by NPA.

1. NPA shall provide to the Commission within thirty (30) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the comprehensive compliance reviews as described below in this Order. Pursuant to the proposed Order, within ninety (90) days of being retained, the ICC will review, and make any recommendations regarding the following areas of NPA's business:
 - a. The adoption and implementation of NPA's policies and procedures in the following areas:
 - i. determining and documenting account-type suitability at account opening, including for advisory accounts being converted from brokerage accounts;
 - ii. conducting and documenting appropriate monitoring and reviews of advisory accounts for suitability, including for inactivity and high-cash balances; and
 - iii. principal trading, including in providing required disclosures, including regarding compensation, and obtaining required consents;
 - b. NPA's training of its IARs in the areas of suitability, account conversions, account monitoring, principal trades, and disclosure of necessary information to clients; and

- c. NPA's process for drafting and amending its Form ADV to ensure that disclosures are accurate and that policies, procedures, and practices are consistent with disclosures.
2. NPA shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and detailed report of its findings to NPA and to the Commission staff (the "Report"). NPA shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to NPA's policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to NPA's policies and procedures and/or disclosures.
3. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.
4. NPA shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, NPA shall in writing advise the Independent Consultant and the Commission staff of any recommendations that NPA considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that NPA considers unduly burdensome, impractical or inappropriate, NPA need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
5. As to any recommendation with respect to NPA's policies and procedures on which NPA and the Independent Consultant do not agree, NPA and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by NPA and the Independent Consultant, NPA shall require that the Independent Consultant inform NPA and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that NPA considers to be unduly burdensome, impractical, or inappropriate. NPA shall abide by the determinations of the Independent

Consultant and, within sixty (60) days after final agreement between NPA and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, NPA shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

6. Within ninety (90) days of NPA's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, NPA shall certify in writing to the Independent Consultant and the Commission staff that NPA has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Judith Weinstock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, or such other address as the Commission staff may provide.
7. NPA shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.
8. To ensure the independence of the Independent Consultant, NPA:
 - a. Shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and
 - b. Shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
9. NPA shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with NPA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with NPA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for

the period of the engagement and for a period of two years after the engagement.

10. For good cause shown, the Commission staff may extend any of the procedural dates set forth in this Subsection D. 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 to be the last day.

E. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty totaling \$711,628.36 as follows:

1. Respondent shall pay disgorgement of \$367,874.12 and prejudgment interest of \$43,754.24, consistent with the provisions of this Subsection E and subject to the offset provisions of Paragraph 3 below.
2. Respondent shall pay a civil money penalty in the amount of \$300,000, consistent with the provisions of this Subsection E.
3. 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 investors. 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 thirty (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.
4. Respondent shall pay the disgorgement, prejudgment interest and civil penalty ordered in this Subsection E (the "Fair Fund") in the following installments: within ten (10) days of the entry of this Order, Respondent shall pay \$511,628.36, representing the full amount of disgorgement and prejudgment interest, and shall pay \$100,000 of the civil penalty amount;

within fifty-five (55) days of the entry of this Order, Respondent shall pay \$100,000 of the civil penalty amount; and within eighty-five (85) days of the entry of this Order, Respondent shall pay \$100,000 of the civil penalty amount, plus all accrued interest. Respondent shall deposit the full amount of the disgorgement and prejudgment interest and the first installment of the civil penalty payment into an escrow account at a financial institution not unacceptable to the Commission staff, and Respondent shall provide evidence of such deposits in a form acceptable to the Commission staff. Payments shall be applied first to post-Order interest accrued pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth herein, all outstanding payments under this Order, including post-Order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

5. Respondent shall be responsible for administering the Fair Fund and may hire a professional acceptable to the Commission staff, 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.
6. Respondent shall distribute the amount of the Fair Fund to each affected investor in the following categories: (a) for the period from April 1, 2017 through December 31, 2019, clients whose accounts had five or fewer trades; and (b) for the period April 1, 2017 through December 31, 2021, clients who paid markups or markdowns on violative principal trades, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent or its past or present officers or directors have a financial interest.
7. Respondent shall, within ninety (90) days of the entry of this Order, submit a proposed disbursement calculation ("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 Calculations and its implementation, and to provide the staff with an opportunity to ask questions.

Respondent shall also provide to 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 Respondent is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection E.

8. Respondent 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 investor, (2) the exact amount of the payment to be made to each affected investor, (3) the application of a *de minimis* threshold, and (4) the amount of reasonable interest paid.
9. Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph 13 of this Subsection E. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.
10. If, after Respondent's reasonable efforts to distribute the Fair Fund pursuant to the approved Payment File, Respondent is unable to distribute any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor 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 when the distribution of the funds is complete and before the final accounting provided for in Paragraph 12 below is submitted to Commission staff. Any such 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 Respondent 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 Judith Weinstock, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, or such other address as the Commission staff may provide.

11. 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 distribution of the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF and the Foreign Account Tax Compliance Act, and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid by the Fair Fund.
12. Within one hundred and fifty (150) days after Respondent completes the distribution of all amounts payable to the affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection E. The Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor, with reasonable interest reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort 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 NPA as the Respondent in these proceedings and the file number of these proceedings to Judith Weinstock,

Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

13. The Commission staff may extend any of the procedural dates set forth in Paragraphs 3 through 9 of this Subsection E 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.

F. Respondent shall comply with the undertakings enumerated in Section III, Paragraph 22 above.

By the Commission.

Vanessa A. Countryman
Secretary