

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6288 / April 18, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21373

In the Matter of

BETTERMENT 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 Betterment LLC (“Respondent” or “Betterment”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. At various times between March 2016 and April 2019 ("Relevant Period"), Betterment, a registered investment adviser: (a) misstated and omitted material information in statements to clients concerning an automated tax-loss harvesting service ("TLH") it offered; (b) failed to provide notice to clients concerning certain changes it made to their advisory contracts; (c) failed to maintain certain required books and records; and (d) failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

2. With respect to TLH, which scans client accounts for harvesting opportunities to reduce their tax burden, from January 2016 through April 2019, Betterment misstated or omitted material information concerning changes, constraints, and computer coding errors associated with TLH. First, in January 2016, Betterment changed the TLH scanning frequency for individual client accounts from daily to alternating days, but until April 2019 continued to state in certain marketing materials and other disclosures that client accounts were scanned daily. Second, from September 2017 through January 2019, Betterment failed to disclose certain constraints regarding TLH for clients that selected a third-party portfolio strategy available on Betterment's platform together with a Betterment-constructed portfolio ("Multiple-Portfolio Clients"). Third, at different times during the Relevant Period, Betterment had two computer coding errors that prevented TLH from harvesting losses for certain impacted clients. Collectively, these issues adversely impacted the value of TLH for over 25,000 client accounts, and as a result, clients lost approximately \$4 million dollars in potential tax benefits.

3. In addition, Betterment failed to provide advance notice of certain material changes to its advisory contract in violation of its fiduciary duty as an investment adviser. Until March 2023, Betterment's advisory contract terms permitted it to change its terms unilaterally without advance notice to clients. Furthermore, at certain times during the Relevant Period, Betterment failed to maintain accurate and current books and records reflecting written agreements with its advisory clients who had: (a) selected TLH; or (b) selected a third-party portfolio strategy. Finally, in connection with the TLH failures, Betterment failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Respondent

4. **Betterment**, a Delaware limited liability company based in New York, New York, has been registered with the Commission as an investment adviser since 2009. A primary component of Betterment's advisory services is the provision of automated, software-based

portfolio management on a discretionary basis. Betterment provides its services to retail clients, clients who utilize Betterment through third-party investment advisers, and retirement plans and their participants. In its annual updating amendment on Form ADV, filed March 30, 2022, Betterment reported \$33.8 billion in regulatory assets under management.

Betterment, TLH, and Multiple Portfolio Strategies

5. Among other things, Betterment provides investment advice by offering portfolio strategies to clients. The portfolio strategies consist primarily of exchange traded funds (“ETFs”) that provide exposure to different asset classes, and Betterment recommends a particular fixed income versus equity allocation based on a client’s reported goals.

6. Since 2014, Betterment has offered TLH to clients that have taxable accounts. In order to take advantage of the service, clients must affirmatively enable TLH by selecting it through the online user interface. TLH is an automated, algorithm-driven process whereby individual positions in client taxable accounts are scanned to identify unrealized investment losses. If, after meeting certain conditions, an ETF is identified where a client has an unrealized loss that could potentially be used to reduce their liability, it is sold and replaced with a closely correlated ETF with similar exposure. In other words, TLH is designed to replace a security with another security to capture a potential tax benefit while maintaining a similar exposure and allocation in a client’s account. Since its introduction through January 2023, over 275,000 client accounts have enabled TLH.

7. In September 2017, Betterment began to support clients’ selection of third-party portfolio strategies in their account. Clients could select from a menu of third-party managers that provide Betterment with model portfolio strategies which Betterment implements on behalf of the client. Like the Betterment portfolio strategies, the third-party portfolio strategies consist primarily of ETFs. A client could allocate their account assets to multiple portfolio strategies, so that an account could have assets in both Betterment-constructed and third-party portfolio strategies. These clients could enable TLH, which would then scan both their Betterment and third-party portfolios (with the exception of one third-party portfolio strategy that explicitly did not support TLH).

Inaccurate Disclosures Concerning TLH Scanning Frequency

8. Between January 2016 and April 2019, certain Betterment marketing materials described TLH as a service that scanned a client’s account on a daily basis for harvesting opportunities. For example, a post on Betterment’s website from January 9, 2017, stated that TLH “scan[s] portfolios daily for losses (temporary dips that result from volatility) that can be harvested.” Similarly, until April 2019, a white paper prepared by Betterment and posted on its website to describe TLH and detail its benefits, represented that TLH conducted daily scanning. The white paper included hypothetical performance data associated with TLH that was based on daily scanning. For clients that enabled TLH, Betterment sent an email whenever TLH resulted in a transaction in the client’s account, stating that TLH “works hard for you automatically, *every*

day.” (Emphasis added.) On one Betterment webpage, TLH was said to “run[] throughout each day and can reduce your tax exposure better than other automated tax harvesting tools.”

9. Prior to January 2016, TLH generally scanned each client account on each day that U.S. financial markets were open. Due to constraints related to overall client trading volume, Betterment adjusted its TLH scanning frequency in January 2016. Betterment separated clients into two groups and scanned their accounts on alternating trading days. Betterment did not perform any contemporaneous analysis to evaluate the potential impact of the change on clients, and clients that utilized TLH were not notified of the change. Reducing TLH’s scanning frequency can reduce the benefit of the service, depending on a number of client and market specific factors.

10. Betterment’s disclosures continued to refer to daily scanning despite the change in TLH account scanning frequency to scan client accounts every other day. At the time this change was implemented, Betterment did not have policies and procedures in place that required a review of existing TLH disclosures against changes in TLH or, more generally, changes in Betterment’s algorithms that could affect its services.

11. Betterment gradually removed references to daily scanning from its disclosures, but certain references remained until May 2019. On April 24, 2019, Betterment determined that its trading system could revert back to daily scanning and reinstated daily scanning for all clients with TLH enabled as of that date.¹

12. During the Relevant Period, approximately 25,000 clients lost approximately \$1.9 million in potential tax benefits as a result of the undisclosed change in scanning frequency.

Inaccurate Disclosures Concerning TLH and Multiple Portfolio Strategies

13. The TLH algorithm imposed certain restrictions on harvesting activities for Multiple-Portfolio Clients. Because some third-party managers used the same ETFs in their portfolio strategies as Betterment did, there was a risk of certain negative tax implications stemming from transactions in these overlapping ETFs. For example, if TLH directed a sale of an ETF in the client’s Betterment portfolio, and the same security was subsequently purchased in the client’s third-party portfolio within a thirty-day period, there could be a negative tax consequence for the client.²

¹ Betterment did not reintroduce references to daily scanning in disclosures after reverting to daily scanning.

² The Internal Revenue Service (“IRS”) disallows losses to offset capital gains or income for wash sales, which are triggered when an individual buys “substantially identical stock” within thirty days of the sale. *See* IRS Publication 550 (2021) Investment Income and Expenses, at 56.

14. Betterment designed the TLH algorithm with constraints intended to minimize these negative tax consequences. Asset classes that were eligible for TLH were assigned up to three closely correlated ETFs (ranked as primary, secondary, and tertiary choices), which could be used as replacements in TLH transactions. In some instances, the ETFs in a particular asset class overlapped between two portfolio strategies, but were ranked differently, which created the risk of a potential negative tax consequence from a harvest. Betterment restricted TLH from harvesting in asset classes where that type of overlap existed to avoid the risk of a potential negative tax consequence. The result was that TLH activity, and potentially TLH results, could differ significantly for Multiple-Portfolio Clients as compared to clients who selected a single portfolio strategy.

15. These constraints associated with overlapping securities were not described, however, in Betterment's client disclosures. In fact, one disclosure provided to clients when they selected a certain third-party portfolio strategy suggested that TLH would not function any differently. That disclosure stated that "tax loss harvesting will continue to work for goals in taxable accounts for which the [third-party portfolio] is not elected." As a result, Betterment did not disclose to Multiple-Portfolio Clients that selecting both a Betterment and a third-party portfolio could limit tax loss harvesting opportunities.

16. In January 2019, Betterment made the interaction between TLH and third-party portfolio strategies more clear when it updated a disclosure statement it provided to clients that enabled TLH. Specifically, Betterment added the following language: "Electing different portfolio strategies for multiple Betterment goals may cause TLH to identify fewer harvesting opportunities than it might if you elect the same portfolio strategy for all of your Betterment goals." Betterment also notified Multiple-Portfolio Clients, and stated that the "interaction [between TLH and multiple portfolio strategies] may not have been readily apparent in previous versions of our TLH resources" The notification, however, did not attempt to quantify whether a client was adversely affected, and offered no remediation. Separately, Betterment credited client accounts of a certain third-party investment adviser approximately \$9,000 after that adviser inquired about the level of harvesting activity in those client accounts. While Betterment credited the third-party adviser's clients, it did not remediate other affected Betterment clients.

17. From September 2017 until January 2019, there were approximately 5,600 Multiple-Portfolio Client accounts that enabled TLH. At least 3,200 client accounts lost approximately \$1 million in potential tax benefits as a result of the undisclosed constraints in the design of TLH.

Coding Errors

18. Beginning in April 2016, a coding error caused two Betterment client databases to not interface properly for certain accounts. The result was that for at least 150 accounts, TLH was disabled although clients had enabled it. Consequently, Betterment did not scan these accounts or harvest any tax losses until the coding error was fixed.

19. In January 2019, Betterment learned about and fixed the coding error after an inquiry from the third-party investment adviser referenced in paragraph 16. Betterment attempted to notify impacted clients and remediate the issue, but these efforts were incomplete. In particular, Betterment determined that the error had persisted for nearly three years, but in emails notifying clients, it stated that the error “may have caused your account to miss some efficient harvesting opportunities in 2018.” Contemporaneously, Betterment provided certain clients with approximately \$28,600 in credits for missed harvests in 2018. Betterment did not address impact to clients for the period April 2016 through 2017, and for 2018, Betterment provided partial compensation to some clients, but did not compensate other impacted clients.

20. Beginning in November 2015 until June 30, 2018, Betterment experienced another coding error related to over 600 client accounts that were titled as joint trust accounts. Similar to the coding error discussed in paragraph 18, this error caused TLH to be disabled for clients that had enabled the service. Betterment similarly learned about the issue as a result of a client inquiry, in June 2018, and fixed the coding error shortly thereafter. However, it did not notify any other affected client or provide remediation because it concluded, incorrectly, that the issue did not adversely impact clients.

21. Together, these coding errors impacted approximately 760 client accounts. At least 700 client accounts were negatively impacted, and lost approximately \$1.1 million in potential tax benefits during the Relevant Period.

Betterment’s Advisory Contract

22. From March 2016 through February 2023, Betterment’s advisory contract with clients permitted it to change the terms of the contract unilaterally without advance notice to clients. Instead, the agreement required clients to periodically visit Betterment’s website and review the contract themselves for any changes.

23. During the Relevant Period, Betterment made material changes to its advisory contract on several occasions without providing notice to clients, in violation of its fiduciary duty. For example, on July 23, 2018, Betterment modified the advisory contract with the following disclaimer concerning TLH: “Betterment makes no guarantees regarding the frequency and/or timing of tax loss harvests, and neither Betterment nor Betterment Securities shall be liable for any losses arising out of the failure to harvest a particular loss at a particular time.” No notice was provided to existing clients concerning this change in the advisory contract.

24. In March 2023, Betterment modified its advisory contract to require Betterment to specifically notify clients, in advance, regarding material changes to the advisory contract.

Books and Records

25. Clients who enabled TLH or chose a third-party portfolio strategy generally used Betterment's online platform to make and document these selections. These selections constituted written agreements relating to Betterment's advisory services that Betterment was required to retain.

26. During the Commission's investigation, the staff requested Betterment provide information indicating which clients had enabled TLH at certain times during the Relevant Period. From March 2016 until October 2017, Betterment did not maintain accurate and current records of clients' written agreements enabling TLH, and thus could not produce that information. The staff also requested that Betterment provide information indicating whether clients had selected a third-party portfolio strategy at certain times during the Relevant Period. From September 2017 until January 2019, Betterment did not maintain accurate and current records of those clients' written agreements selecting a third-party portfolio strategy, and thus could not produce the requested information.

Policies and Procedures

27. During the Relevant Period, Betterment did not adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. For example, and as discussed above, as of January 2016, Betterment had not adopted policies and procedures concerning the impact a computer coding change could have on its disclosure obligations.

28. In July 2017, Betterment adopted an Algorithm Governance Policy (the "Algo Policy"). Among other things, the new Algo Policy required the Chief Compliance Officer or their designee to "evaluate whether any changes to [software] materially affect client experience such that they require an update to existing disclosures."

29. Despite the adoption and implementation of the Algo Policy and additional updates to Betterment's policies and procedures, inaccurate TLH disclosures persisted until April 2019. Until April 2021, Betterment lacked policies and procedures reasonably designed to ensure necessary communication between its compliance personnel, who review disclosures, and its engineers, who design and update its algorithms. In part due to a lack of such policies and procedures, Betterment did not update TLH disclosures concerning the interaction between TLH and multiple portfolio strategies until January 2019, and incorrect disclosures in its marketing materials regarding scanning frequency remained until April 2019. In April 2021, Betterment revised the Algo Policy by, among other things, requiring annual review of its product disclosures involving both the compliance function and subject-matter experts such as software engineers. At approximately the same time, Betterment also developed more detailed guidance for its engineers

outlining whether and when to consult legal and compliance in connection with, for example, changes to algorithmic systems.

Violations

30. As a result of the conduct described above, Betterment willfully³ violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging “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), which may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

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

32. As a result of the conduct described above, Betterment violated Section 204 of the Advisers Act, and Rule 204-2(a)(10) promulgated thereunder, which require that investment advisers registered with the Commission maintain and preserve certain books and records. Rule 204-2(a)(10) requires that registered investment advisers “make and keep true, accurate and current . . . [a]ll written agreements . . . entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.”

IV.

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

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

A. Respondent Betterment cease and desist from committing or causing any violations and any future violations of Sections 204, 206(2), and 206(4) of the Advisers Act and Rules 204-2 and 206(4)-7 promulgated thereunder.

³ “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

B. Respondent Betterment is censured.

C. Respondent Betterment shall pay a civil penalty of \$9,000,000, consistent with the provisions of this Subsection C:

(i) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties described above for distribution to Betterment clients impacted by the conduct described in this Order (“Affected Advisory Clients”). 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.

(ii) Within ten (10) days of the issuance of this Order, Respondent shall deposit \$9,000,000 (the “Fair Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

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

(iv) Respondent shall distribute from the Fair Fund an amount representing the financial harm that occurred during the Relevant Period caused by the practices described above, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. If there are insufficient funds to fully compensate Affected Advisory Clients for these amounts, the Fair Fund will be distributed to Affected Advisory clients in a pro rata fashion. If sufficient funds are available, reasonable interest will be paid on such amounts. The Calculation shall be subject to a *de minimis* threshold that is approved by the Commission staff. No portion of the Fair Fund shall be paid to any Affected

Advisory Client account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(v) Respondent shall, within ninety (90) days from the date of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vi) 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 Advisory Client. The Payment File should identify, at a minimum: (1) the name of each Affected Advisory Client; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid, if applicable. Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.

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

(viii) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an Affected Advisory Client or a beneficial owner of an Affected Advisory Client's account or any other factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 once the distribution of funds is complete and before the final accounting provided for in paragraph (x) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

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

- (b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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

Payments by check or money order must be accompanied by a cover letter identifying Betterment LLC 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 Sandeep Satwalekar, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, Division of Enforcement, 100 Pearl Street, Suite 20-100, New York, NY 10004.

(ix) 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 Fair Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding payments to Affected Advisory Clients, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act. Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(x) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to Affected Advisory Clients, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred or credited to each Affected Advisory Client; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to Affected Advisory Clients in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Sandeep Satwalekar, Assistant Regional Director, Securities and Exchange

Commission, New York Regional Office, Division of Enforcement, 100 Pearl Street, Suite 20-100, New York, NY 10004. 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.

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

By the Commission.

Vanessa A. Countryman
Secretary