

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6380 / August 21, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21569

In the Matter of

**Titan Global Capital
Management USA LLC**

Respondent.

**CORRECTED 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 Titan Global Capital Management USA LLC (“Titan” or “Respondent” or “the Adviser”).

II.

In anticipation of the institution of these proceedings, Respondent 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 finds¹ that:

Summary

1. This matter concerns violations of the Advisers Act by Titan Global Capital Management USA LLC, a registered investment adviser.

2. Titan is a FinTech investment adviser that operates a technology investment platform offering multiple investment strategies, which include managed strategies. The strategies include traditional and alternative investments, as well as a crypto strategy, among others. Titan advertises that it provides personalized investment advice through its mobile app. Titan’s client base is primarily comprised of retail investors. As of October of 2022, Titan offered seven investment strategies, including the Titan Crypto strategy (“Titan Crypto”) launched on August 10, 2021.

3. Beginning June 2021, Titan elected to comply with amendments to Advisers Act Rule 206(4)-1 adopted by the Commission in December 2020 (the “Marketing Rule”). Titan, however, did not adopt and implement written policies and procedures or adapt its practices to address these new regulatory requirements. As a result, between at least August 11, 2021 and continuing through October 3, 2022 (the “Relevant Period”), Titan violated the Marketing Rule by advertising hypothetical performance without having adopted and implemented policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience and by failing to provide certain information underlying the hypothetical performance advertised.

4. Titan also violated the Marketing Rule and Advisers Act Section 206(2) when it made misleading statements in advertisements on its website regarding the hypothetical performance of its investment strategies. For example, Titan made misleading representations in written marketing materials concerning the performance of Titan Crypto (an “actively managed crypto investment strategy” offered to retail investors). Titan advertised “annualized” performance results for Titan Crypto as high as 2,700 percent, but its advertisement did not include material information about how the annualized return was calculated, including that the annualized return was based on a purely hypothetical account,

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

rather than an actual account's performance and that the 2,700 percent annualized return figure was based on the assumption that the strategy's performance in its first three weeks would continue for an entire year. Titan also failed to provide information in its advertisements about the risks and limitations of using this hypothetical performance in making investment decisions.

5. In the Relevant Period, Titan also made conflicting disclosures on its website and in its wrap fee brochure about how Titan Crypto assets were custodied.

6. Since at least June 2019, Titan included in its client advisory agreements liability disclaimer language, commonly referred to as a hedge clause, which created the false impression that clients had waived non-waivable causes of action against Titan provided by state or federal law.

7. Titan failed to adopt policies and procedures related to the accuracy of its disclosures concerning its internal controls regarding Titan representatives' personal trading in crypto assets held in the Titan Crypto strategy as it had represented to clients.

8. Titan also failed to adopt and implement policies and procedures reasonably designed to ensure that client signatures were obtained to authorize certain types of transactions in client accounts.

9. As described further below, Titan's conduct violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 thereunder.

Respondent

10. Titan has been a registered investment adviser with the Commission since December 8, 2017. Titan's headquarters is located in New York City, New York. Titan's most recent Form ADV annual amendment (dated March 31, 2023) disclosed that Titan had approximately \$548 million in regulatory assets under management and over 52,000 accountholders. During the Relevant Period, Titan included seven investment strategies in its client offerings (together the "Titan Strategies").

Background

11. During the Relevant Period, Titan offered the Titan Strategies to retail investors. The investment strategies were made available to clients and prospective clients solely through a mobile app.

12. At the time of the conduct described herein, Titan clients had no direct access to Titan investment advisory representatives and Titan Crypto was available to any investor with an existing client account or to new investors, investing a minimum of \$100.

Titan Failed to Comply with the Marketing Rule and Made Misleading and Inadequate Disclosures Regarding Hypothetical Performance Metrics

13. In December 2020, the Commission adopted significant amendments to Advisers Act Rule 206(4)-1, which governs marketing efforts by registered investment advisers. Although advisers were not required to comply with these amendments until November 2022, Titan chose voluntarily to follow the amended rule as of June 2021, as it was allowed to do.²

14. Pursuant to the Marketing Rule, Titan was prohibited from using any hypothetical performance unless it “(i) adopt[ed] and implement[ed] policies and procedures reasonably designed to ensure that the hypothetical performance [was] relevant to the likely financial situation and investment objectives of the intended audience . . .; (ii) provide[d] sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) provide[d] . . . sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions . . .” In addition, the Marketing Rule requires that advertisements not include performance results in a manner that is not “fair and balanced,” and not “[o]therwise be materially misleading.”

15. Although Titan had voluntarily elected to follow the Marketing Rule during the Relevant Period, Titan failed to adopt and implement any policies or procedures reasonably designed to ensure that the hypothetical performance metrics included in its advertisements complied with the Marketing Rule.

16. As a result, Titan published hypothetical performance results that did not comply with the Marketing Rule and were materially misleading in violation of Advisers Act Section 206(2). As an example, for the Titan Crypto strategy, the website at certain points advertised an “annualized return” of 2,700 percent. But in these and subsequent advertisements, Titan failed to present material criteria used and assumptions made in calculating its hypothetical performance projection, including sufficient information to allow the intended audience—which consisted of retail investors—to appreciate the significant risks and limitations associated with this hypothetical performance projection. For example, Titan did not disclose in the advertisements that the 2,700 percent annualized return was based on a purely hypothetical account in which no actual trading had occurred, that this annualized

² See, Rel. No. IA-5653 (December 22, 2020); see also *Marketing Compliance Frequently Asked Questions*, Staff Guidance (Apr. 14, 2021) (explaining that “[a]n adviser may choose to comply with the amended marketing rule in its entirety any time starting on the effective date, May 4th, 2021.”)

return had been extrapolated from a period of only three weeks (from August 10, 2021 to August 31, 2021), that the hypothetical return for this three-week period was calculated at twenty-one percent, that the projected 2,700 percent annualized return was based on the assumption that the Titan Crypto strategy would continuously generate a twenty-one percent return every three weeks for an entire year, or Titan’s views as to the likelihood that this assumption would bear out. The advertisements also did not disclose whether the hypothetical projection was net of fees and expenses.

17. Titan provided certain information about the assumptions it used to calculate the hypothetical annualized return, and certain risks, but this information was not as clear and prominent as the highlighted 2,700 percent annualized return. In fact, this additional information was not even provided in the advertisements. Instead, this additional information was accessible only through links embedded in the advertisements as reflected below:

Crypto is an actively managed portfolio of cryptoassets that we believe are positioned for outstanding long-term returns with minimal correlation to equities and with attractive hedging qualities.

Number of Coins	~5 - 10
Mandate	Cryptocurrencies
Inception	8/10/2021
Annualized Return	2700.0%

[TRACK RECORD](#)

Titan Crypto is available to all U.S. residents except those with home addresses in New York. Our crypto partner is still awaiting regulatory approval to offer crypto to New York residents. Cryptocurrency advisory services are provided by Titan Global Capital Management USA LLC. Cryptocurrency execution and custody services are provided by Apex Crypto LLC (NMLS ID 1828849).

[Disclosures](#)

18. As reflected above, underneath the prominently displayed advertised 2,700 percent annualized return, there are two embedded hyperlinks labeled generically as “Disclosures” and “Track Record.” Investors could click on these links and obtain some information about the assumptions used to calculate the hypothetical performance, and the attendant risks. Even though Titan directed the advertisement to a mass audience, the advertisement itself included no information to alert retail investors of the necessity of clicking on the embedded links to view vital information about the criteria, assumptions, risks, and limitations of the hypothetical performance results Titan advertised.

19. For example, if a client accessed the embedded links, general disclosures appeared stating that the annualized return calculation was based on “short-term results” and was “not indicative of future expectations.” In addition, there was some explanation that the

hypothetical 2,700 percent annualized return was calculated using an extended internal rate of return (XIRR) calculator and was performed over a year-long period, based on an account balance of \$10,000 for an investor with an aggressive risk profile.

20. The embedded links also failed to disclose the significant risks associated with the annualized return calculation, including that it was highly unlikely that the Titan Crypto strategy would continuously deliver a twenty-one percent return every three weeks for an entire year. Titan's advertisement did not present the hypothetical projected performance in a fair and balanced way, or in a way that was not materially misleading.

21. As a result, Titan violated Advisers Act Sections 206(2) and 206(4), as well as Rule 206(4)-1 thereunder.

Titan Made Conflicting and Misleading Disclosures Concerning the Custody of Titan Crypto Assets

22. On the Titan website, Titan disclosed that cryptocurrency execution and custody services are provided by a clearing firm ("Clearing Firm") and the clearing firm's affiliate ("Affiliate").

23. Titan's Wrap Fee Brochure ("WFB") distributed to clients and potential clients during the Relevant Period, stated, at page 8, that "[Affiliate]] will buy and sell supported crypto assets," and "store crypto assets acquired by Clients, and track crypto transactions via the Titan App. The investments in each Client's crypto account are held in a separate account in the name of the Client at [Affiliate], and not with Titan."

24. Yet, later in the WFB on page 45, in contradiction to the website disclosure and earlier disclosures in the WFB, Titan stated that "[Affiliate] *does not custody* crypto assets, but instead relies on unaffiliated third parties to provide custody of crypto assets." (emphasis added).

25. Titan's disclosures created the false impression that clients' crypto assets were held by Clearing Firm and Affiliate. In reality, neither Clearing Firm nor Affiliate ever held Titan clients' crypto assets. Titan's disclosures did not disclose the actual custodians of its clients' crypto assets.

26. As a consequence, Titan clients were provided with misleading information concerning who held their assets, how those entities did or did not secure those assets, and whether their assets might be subject to financial risk such as custodian bankruptcy.

Titan Inappropriately Included a Hedge Clause in Client Agreements

27. Titan’s advisory agreements also included liability disclaimer language, commonly referred to as a hedge clause. Whether a particular hedge clause is misleading is a facts-and-circumstances determination.

28. On June 5, 2019, the Commission published the Commission Interpretation Regarding Standard of Conduct for Investment Advisers, IA Rel. No. 5248 (June 5, 2019) (“Commission Statement”). The Commission Statement provided in relevant part that “there are few (if any) circumstances in which a hedge clause in an agreement with a retail client would be consistent with [] antifraud provisions, where the hedge clause purports to relieve the adviser from liability for conduct as to which the client has a non-waivable cause of action against the adviser provided by state or federal law. Such a hedge clause generally is likely to mislead those retail clients into not exercising their legal rights, in violation of the antifraud provisions, even where the agreement otherwise specifies that the client may continue to retain its non-waivable rights.” *Id.* at p. 11, fn. 31.

29. In the Relevant Period, Titan distributed advisory agreements to clients with a hedge clause, which stated, in relevant part:

[Client] will defend, indemnify and hold [Titan] harmless from any and all Losses sustained by [Titan] arising out of or in connection with (i) any breach of this agreement by Client, including your failure to provide true, accurate, complete, and current information or to update information or any misrepresentations or omissions made by you in this Agreement; (ii) any use of or access to the Titan App and the advisory services provided hereunder, (iii) any direction, instruction or communication you provide to us or any other Indemnified Party in connection [sic] this Agreement, your Titan Account (including deposits, withdrawals, or transfers of assets to or from such account) or the assets in your Titan Account or (iv) any claim brought against [Titan] relating to services provided to Client prior to the execution of this Agreement by any person who at the time of the provision of such services was not an Indemnified Person. This indemnification shall survive the termination of this Agreement, the Client's use of the Titan App and the Titan Account.

.... Titan and its Indemnified Persons will not be liable for any indirect, special, incidental, non-compensatory, punitive or consequential damages or other losses (regardless of whether such damages or other losses were reasonably foreseeable). Titan Client Account Agreement at 17-18.

30. This language, when read in its entirety, is inconsistent with an adviser's fiduciary duty and the Commission Statement because it may mislead Titan's retail clients into not exercising their legal rights. Accordingly, Titan's hedge clause violates Section 206(2) of the Advisers Act.

Titan Failed to Adopt and Implement Policies and Procedures to Prevent the Unauthorized Application of Client Signatures to Account Documents

31. In the course of its compliance reviews, Titan discovered a wide-spread practice of applying client signatures to client account documents submitted to third-party custodians on behalf of Titan's clients. From 2019 until approximately August 26, 2022, when the conduct was discovered, Titan had access to, and in certain cases, the ability to transfer, client funds without first obtaining client signatures. Specifically, Titan determined that after clients had requested the asset transfer or made other account-related requests through the mobile app, Titan employees applied an electronic signature to Letters of Authorization ("LOAs") to effectuate the request rather than seek signatures from the clients personally.

32. Titan discontinued the practice upon discovery and retained an independent auditing firm registered with the Public Company Accounting Oversight Board ("PCAOB") to investigate the now discontinued practice of applying client signatures to client account documents and voluntarily disclosed the practice to Commission staff. The PCAOB-registered auditor that Titan retained did not identify any unauthorized asset transfers or other account-related actions for which clients' electronic signatures were applied. Even though the asset transfers made pursuant to the LOAs are believed to have been authorized by Titan clients beforehand, more than 3,000 LOAs were electronically signed by Titan without clients' knowledge that their electronic signatures were being applied to these documents. This practice allowed Titan to effect transactions in client accounts, and yet Titan had not adopted reasonable safeguards to verify that clients had signed the LOAs themselves.

33. In addition to LOAs, Titan applied electronic client signatures to a variety of client account documents, including, Individual Retirement Account ("IRA") Distribution Forms, IRA Journal Request Form and Deposit Slips, Wire Request Forms, Check Request Forms, Account Transfer Requests, Roth IRA Distribution Forms and others, to effectuate transactions clients had authorized. Titan similarly did not obtain electronic signatures from its clients or authorization for Titan to apply their electronic signatures to these documents. Titan determined following a subsequent internal review that the transfers described above were client authorized, despite the failure to obtain client signatures.

34. Titan's failure to obtain client signatures prior to effecting transfers was the result of Titan's failure to adopt and implement reasonably designed written policies and procedures related to verifying transfers in client accounts in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7.

Titan Failed to Adopt and Implement Policies and Procedures Related to its Representatives' Personal Trading in Crypto Assets

35. In Titan's WFB, provided to clients and prospective clients, Titan specifically stated that it had adopted "personal securities and crypto asset trading procedures" to help manage conflicts of interest. It also stated that Titan employees and associated persons were required to obtain Chief Compliance Officer preapproval to trade in securities and crypto assets. Despite Titan's written representations, Titan failed to adopt and implement such procedures for crypto assets. As a result, Titan violated Section 206(4) of the Advisers Act and Rule 206(4)-7 by not adopting reasonably designed written policies and procedures to ensure the accuracy of its disclosures.

Titan's Remedial and Cooperation Efforts

36. Since July of 2022, Titan has voluntarily undertaken remedial measures to improve its compliance programs. This includes hiring a new Chief Compliance Officer and Chief Legal Counsel and additional legal and compliance staff, and conducting internal audits to review and modify policies and procedures including its Code of Ethics and others and adopting new advertising rules designed to be consistent with the Marketing Rule. Titan also conducted internal audits of its billing and advertising procedures and as a result made changes to these procedures, including procedures designed to require that marketing materials comply with applicable regulations.

37. As a consequence of these remedial measures, Titan identified the above-described practice of inappropriately applying client signatures to transaction documents, self-reported the issue to Commission staff, immediately revised its policies and procedures to clearly prohibit such activity, and communicated and trained Titan staff to prevent any future similar conduct.

38. In determining to accept the Offer, the Commission considered these acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Violations

39. As a result of the conduct described above, Titan willfully³ violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scierter is not required to establish a violation of Section 206(2), but rather may rest on a finding of negligence. *See 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)).

40. As a result of the conduct above, Titan willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1, thereunder, which prohibit the dissemination of any advertisement that violates any of paragraphs (a) through (d) of Rule 206(4)-1.

41. As a result of the conduct above, Titan willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules.

Disgorgement

42. The disgorgement and prejudgment interest ordered in paragraph IV.C. is 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 Securities Exchange Act of 1934 (“Exchange Act”).

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). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

IV.

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

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

- A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 promulgated thereunder;
- B. Respondent is censured;
- C. Respondent shall pay disgorgement, prejudgment interest and a penalty as follows:
 - i. Respondent shall pay disgorgement of \$192,454, prejudgment interest of \$7,598, and a civil monetary penalty of \$850,000 consistent with the provisions of this Subsection C;
 - ii. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty, disgorgement and prejudgment interest described above for distribution to affected clients' accounts. Amounts ordered to be paid as a civil money penalty pursuant to the Order shall be treated as a penalty 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.
 - iii. Within 10 days of the issuance of the Order, Respondent shall deposit \$1,050,052 (the "Fair Fund") into an escrow account at a financial institution

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

- iv. Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- v. Respondent shall distribute from the Fair Fund an amount representing advisory fees it received in connection with the Titan Strategies during the Relevant Period to each former and current Titan client who paid advisory fees to Titan in connection with the investment advisory services Titan provided to the client in connection with the Titan Strategies during the Relevant Period (“Affected Clients” each an “Affected Client”) plus reasonable interest at the Internal Revenue Service’s rate to calculate underpayment penalties compounded quarterly from the date of the purchase to June 30, 2023, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold of \$10. If the amount deposited into the Fair Fund is not sufficient to pay the full amount determined to be payable to Affected Clients, then each Affected Client will receive an amount proportional to the advisory fees the Affected Client paid in relation to the aggregate advisory fees paid by all Affected Clients. No portion of the Fair Fund shall be paid to any Affected Client account in which Respondent, or any of its current or former officers or directors, or any of its current or former employees have an interest.
- vi. Respondent shall, within ninety (90) days from the date of the Order, submit the Calculation to Commission staff for review and approval. At or around the time of submission of the 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 Fair Fund to be available, for a conference call with 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 also shall provide Commission staff such additional information and supporting documentation as Commission staff may request for the purpose of its review. In the event of one or more

objections by 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 Commission staff or additional information or supporting documentation within 30 days of the date that Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- vii. Respondent shall, within 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 Commission staff demonstrating the application of the methodology to each Affected Client. The Payment File should identify, at a minimum, (1) the name of each Affected Client; (2) the exact amount of the payment to be made; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.
- viii. Respondent shall disburse all amounts payable to Affected Clients' accounts within 120 days of the date that Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xiii of this Subsection C. Respondent shall notify Commission staff of the dates and the amount paid in the initial distribution.
- ix. If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an Affected Client or a beneficial owner of an Affected Client's account 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 Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph 12 of this Subsection C is submitted to 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 Titan as 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 Osman Nawaz, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

- x. A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and 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 the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by Respondent and shall not be paid out of the Fair Fund.

- xi. Within one-hundred eighty (180) days after Respondent completes the disbursement of all amounts payable to Affected 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 Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to Affected Clients in accordance with the Calculation approved by 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 Armita Cohen, Assistant Director, Complex Financial Instruments Unit,

Division of Enforcement, Securities and Exchange Commission, 100 F Street NE, Washington DC 20549. Respondent shall provide any and all supporting documentation for the accounting and certification to Commission staff upon its request and shall cooperate with any additional requests by Commission staff in connection with the accounting and certification.

xii. 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 that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$850,000 based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary

