

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21355**

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**In the Matter of**

**Chatham Asset Management, LLC and**  
**Anthony Melchiorre**

**Respondents.**

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**PLAN OF DISTRIBUTION**

**I. OVERVIEW**

1. The Division of Enforcement submitted this Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”). This Plan provides for the distribution of a Fair Fund (the “Fair Fund”) comprised of disgorgement, prejudgment interest, and civil money penalties paid by Chatham Asset Management, LLC (“Chatham”) and Anthony Melchiorre (“Melchiorre” and with Chatham, collectively, the “Respondents”) in the above-captioned matter.<sup>1</sup>

2. As described more specifically below, the Plan seeks to compensate investors in five funds<sup>2</sup> who paid excess performance (aka incentive) fees and management fees to Chatham from January 2016 through December 2018, inclusive (the “Relevant Period”) and incurred losses due to the Respondents’ violations as described in the Order. Each investor’s Recognized Losses will be calculated in accordance with the Plan of Allocation (attached as Exhibit A).

3. Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has identified those investors, or their lawful successor who may have paid excess performance or management fees and suffered losses as a result of the Respondents’ failure to correctly calculate the value of the client funds’ holdings and that it has all records necessary to calculate each investor’s Recognized Loss in accordance with the Plan of Allocation (attached as Exhibit A). As a result, the Fair Fund is not being distributed according to a claims-

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<sup>1</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Advisers Act Rel. No. 6270 (Apr. 3, 2023). (the “Order”).

<sup>2</sup> The Chatham Asset High Yield Master Fund, Ltd.; the Chatham Asset Private Debt and Strategic Capital Fund, LP; the Chatham Fund, LP; the Chatham Everest Fund, L.P.; and the Chatham Eureka Fund, LP (collectively, the “Funds”).

made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission's Rules<sup>3</sup> are not applicable.

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is approved by the Commission, and the Commission retains jurisdiction over its implementation.

## **II. BACKGROUND**

6. On April 3, 2023, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against the Respondents. In the Order, the Commission found that Chatham and Melchiorre violated the antifraud provision of Section 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act") and willfully aided and abetted violations of, and caused certain of their clients to violate, Sections 17(a)(1) and 17(a)(2) of the Investment Company Act of 1940 (the "Company Act"). Specifically, the Commission found that Chatham and Melchiorre traded, on behalf of their fund clients, in three high-yield debt securities issued by American Media Inc. ("AMI"), a wholly owned subsidiary of AMI Parent Holdings, LLC ("AMI Parent"). The Commission found that, at times, from 2016 through 2018, Chatham and Melchiorre engaged in transactions in these AMI debt securities (the "AMI Bonds") that resulted in one Chatham fund selling AMI Bonds and a different Chatham fund purchasing the same AMI Bonds, through various broker-dealers (the "Rebalancing Trades"). According to the Order, over time, the prices at which Chatham and Melchiorre traded the securities in the Rebalancing Trades increased at a significantly higher rate than the prices of similar securities. The Commission also found that Chatham's and Melchiorre's trading in the AMI Bonds accounted for the vast majority of the trading in those Bonds and therefore, over time, had a material effect on their pricing.

7. The Commission further found that Chatham and Melchiorre calculated the net asset values ("NAVs") of their client funds' holdings using pricing data that was based, in part, on the trading prices of the securities. According to the Order, as a result, the NAVs of Chatham's Clients were higher than they would have been if Chatham's Rebalancing Trades were removed from the market for the AMI Bonds, which, in turn, resulted in higher fees being charged to the clients than would have been charged if Chatham's Rebalancing Trades were removed from the market for the AMI Bonds.

8. Finally, the Commission found that many of the Rebalancing Trades involved open-ended mutual funds regulated as registered investment companies ("RICs"). The Commission found that, in those cases, Chatham and Melchiorre aided and abetted and caused RICs to enter into prohibited affiliate transactions in violation of Sections 17(a)(1) and (2) of the Investment Company Act.

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<sup>3</sup> 17 C.F.R. § 201.1101(b)(4).

9. The Commission ordered the Respondents to pay \$11,000,000.00 in disgorgement plus \$3,375,072.00 in prejudgment interest, and civil penalties of \$5,000,000.00, for a total of \$19,375,072.00, to the Commission pursuant to a payment plan ending 360 days following entry of the Order. The Commission also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties collected, along with the disgorgement and prejudgment interest collected, can be distributed to harmed investors (the “Fair Fund”).

10. The Fair Fund includes the \$19,375,072.00 collected pursuant to the Order. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury (“Treasury”), and any interest accrued will be added to the Fair Fund.

### III. DEFINITIONS

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

11. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

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

13. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

14. **“Excluded Party”** means (a) the Respondents; (b) present or former officers or directors of Respondents or any assigns, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities; (c) any employee or former employee of the Respondents or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct described in the Order; (d) any Person who has been the subject of criminal charges related to the conduct described in the Order or any related Commission action; and (e) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

15. **“Fair Fund”** means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondents’ violations described in the Order.

16. **“Final Determination Notice”** means the written notice sent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of the Fund Administrator’s resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 35, except for those whose Plan Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive

Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.

17. **"Net Available Fair Fund"** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

18. **"Payee"** means an Eligible Claimant whose distribution amount is equal to or greater than \$25.00, as calculated in accordance with the Plan of Allocation.

19. **"Person"** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

20. **"Plan Notice"** means the written notice to each Preliminary Claimant regarding the Commission's approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent them from being deemed an Unresponsive Preliminary Claimant; the Preliminary Claimant's Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator as a resource for additional information or to contact with questions regarding the distribution.

21. **"Plan of Allocation"** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

22. **"Preliminary Claimant"** means a Person, or their lawful successors, identified by the Fund Administrator based on her review and analysis of applicable records obtained by the Commission staff during its investigation, who may have paid excess performance (aka incentive) fees and/or management fees to Chatham in connection with their investments in the Funds during the Relevant Period; or those Persons who request a Plan Notice as described in paragraph 37 that are determined by the Fund Administrator to have paid excess performance (aka incentive) fees and management fees to Chatham in connection with their investments in the Funds.

23. **"Recognized Loss"** means the amount of loss calculated in accordance with the Plan of Allocation.

24. **"Relevant Period"** is from January 2016 through December 2018, inclusive.

25. **"Unresponsive Preliminary Claimant"** means a Preliminary Claimant whose address the Fund Administrator and/or the Third-Party has not been able to verify and/or who does not timely respond to attempts to obtain information, including any information sought in the Plan Notice. No further mailings will be sent to those deemed an Unresponsive Preliminary Claimant under this provision. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

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

26. On April 3, 2024, the Commission appointed Miller Kaplan Arase LLP as the Tax Administrator for the Fair Fund to handle the tax obligations of the Fair Fund.<sup>4</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its 2022-2024 Letter Agreement with the Commission.<sup>5</sup>

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

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund, including but not limited to Foreign Account Tax Compliance Act (FATCA).

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

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

29. Allison J.P. Moon is the Fund Administrator for the Fair Fund. As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,<sup>6</sup> no bond is required since the Fund Administrator is a Commission employee.

30. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. The Fund Administrator will engage a third-party, Simpluris, Inc. (the “Third-Party”) to perform some of the administrative tasks associated with implementing the Plan, including, among other things, providing Plan Notices to all investors, maintaining an e-mail address with e-mail support, establishing a website and toll-free number, staffing a call center to address inquiries regarding the Plan, verifying contact information for Preliminary Claimants, disbursing payments in accordance with the Plan, researching and reconciling errors and reissuing payments, and providing a financial accounting of the funds received from the

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<sup>4</sup> See Order Appointing Tax Administrator, Exchange Act Rel. No. 99895 (Apr. 3, 2024).

<sup>5</sup> See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

<sup>6</sup> 17 C.F.R. § 201.1105(c).

Commission. The Third-Party's fees and expenses will be paid from the Fair Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the Commission staff.

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

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

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

33. Using information obtained during and after its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss during the Relevant Period as a result of the Respondents' trading of AMI Bonds, which artificially inflated the price of AMI Bonds and caused the investors to pay excessive fees to Chatham.

### Procedures for Locating and Notifying Preliminary Claimants

34. Within 60 days of Commission approval of the Plan, a Plan Notice will be sent to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

35. If any mailing is returned as undeliverable, the Third-Party will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Plan Notice will be resent to the Preliminary Claimant's new address within 30 days of receipt of the returned mail. If the mailing is returned again, and the Third-Party, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

36. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator or Third-Party.

### Procedures to Request Plan Notice

37. Any Person who does not receive a Plan Notice, as described in paragraph 34, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within 90 days of the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication,

documentation sufficient to support their assertion that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. If the Fund Administrator determines that the Person should be classified as a Preliminary Claimant and should have received a Plan Notice, a Plan Notice will be sent to the Person within 30 days of receiving the Person's documentation.

#### Failure to Respond to Plan Notice

38. If a Preliminary Claimant is requested to respond and fails to respond within 30 days from the initial mailing of the Plan Notice, the Third-Party will make no fewer than two attempts to contact the Preliminary Claimant by telephone or email. The second attempt will in no event take place more than 135 days from the Commission's approval of the Plan. If a Preliminary Claimant fails to respond to the Third- Party's contact attempts as described in this paragraph, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

39. Disputes will be limited to the calculation of Recognized Loss. Within 150 days of the Commission's approval of the Plan, the Fund Administrator must receive a written communication detailing any dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

40. Within 180 days of the Commission's approval of the Plan, a Final Determination Notice will be sent to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 39 above notifying the Preliminary Claimant of the Fund Administrator's resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 38 above, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that they have been deemed an Unresponsive Preliminary Claimant.

#### Distribution Methodology

41. The Fund Administrator will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party, or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

42. No Distribution Payments will be made for less than \$25.00. If an Eligible Claimant's distribution amount calculates to less than \$25.00, in accordance with the Plan of Allocation, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and their distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$25.00. Any Eligible Claimant whose distribution amount is equal to or greater than \$25.00 will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve

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

44. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 58.

#### The Escrow Account

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

#### Preparation of the Payment File

46. Following the issuance of all Final Determination Notices, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, Distribution Payment, the percentage of harm being compensated, and the amount to be withheld from the Distribution Payment for taxes, if applicable (the "Payee List"). The Payee List will also include the total amount to be disbursed to the Bank, along with the total amount to be disbursed to the Tax Administrator and transferred to the Treasury as tax withholdings.

#### Distribution of the Fair Fund

47. Pursuant to Rule 1101(b)(6) of the Commission's Rules,<sup>7</sup> the Commission staff will obtain an order from the Commission to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Third-Party in accordance with the Plan. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee's bank account in accordance with written instructions provided to the Bank by the Third-Party.

48. All checks will bear a stale date of 180 days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if they fail to negotiate their check by the stale date, and the funds will remain in the Fair Fund except as provided in paragraph 52.

49. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should

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<sup>7</sup> 17 C.F.R. § 201.1101(b)(6).

consult his, her or its tax advisor for advice regarding the tax treatment of the distribution, however, any backup withholding required under IRC § 3406(a) and the regulations promulgated thereunder, or withholding required with respect to nonresident aliens under Chapter 3 of the IRC, or FATCA-subject Payees under Chapter 4 of the IRC, will be withheld as required from the Distribution Payment and remitted to the Internal Revenue Service on the Payee's behalf; (c) a statement that checks will be void and cannot be reissued after 180 days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator and provided to the Commission staff for review and approval.

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

#### Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

51. The Third-Party shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Third-Party as "undeliverable." If new address information becomes available, the Third-Party will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than 150 days from the date of issuance of the original check) or if the distribution check is returned again, the check shall be voided and the Third-Party shall instruct the issuing financial institution to stop payment on such check. If the Third-Party is unable to find a Payee's correct address, the Fund Administrator, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

52. The Fund Administrator will direct the Third-Party to reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (e.g., name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will direct the Third-Party to issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of 180 days from the date of issuance of the original check or 30 days from the reissuance, and in no event will a check be reissued after 180 days from the date of the original issuance without the approval of Commission staff.

53. The Third-Party will work with the Bank and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Third-Party is responsible for researching and reconciling errors and reissuing payments when possible. The Third-Party is also responsible for accounting for all payments.

The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

54. The Third-Party will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may direct the Third-Party to reissue such checks, subject to the time limits detailed herein.

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

56. Bank fees charged by the intermediary or designation bank selected by the Payee may reduce a Payee’s Distribution Payment.

#### Receipt of Additional Funds

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

#### Disposition of Undistributed Funds

58. If funds remain following the initial distribution, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds, pursuant to the Commission’s Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

59. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds due to the Fair Fund’s overpayment of taxes or for waiver of IRS penalties.

60. Once the Fund Administrator deems further distribution of the Fair Fund to investors infeasible, the Fund Administrator will direct the Third-Party to have any uncashed Distribution Payments voided and to return any remaining funds disbursed to the Bank pursuant to paragraph 47 above to the Commission to become part of the Residual.

61. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), after the final accounting is approved by the Commission. Returning such money to the Respondents would be inconsistent with the equitable principle that no Person should profit from their wrongdoing. Therefore, in these circumstances distributing disgorged funds to the Treasury is the most equitable alternative.

### Administrative Costs

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

### Accountings

63. When all funds have been disbursed, except for the Residual described in paragraph 59, the Third-Party will submit to the Fund Administrator a final report (the "Third-Party Final Report") that includes an accounting of all funds disbursed to the Bank. The Third-Party Final Report will include, at a minimum, the number and total amount of payments sent to Payees, the percentage of the Payee's Recognized Loss compensated by the Distribution Payment(s) from the Fair Fund, and the number and total amount of payments successfully disbursed (i.e., cashed or electronically transferred) to Payees, and the amount of funds returned to the Commission, pursuant to paragraph 60. The Third-Party Final Report must be endorsed by a declaration executed by the Third-Party under penalty of perjury under the laws of the United States.

64. Upon receipt of the Third-Party's Final Report described above, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the Commission's approval prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the Fund Administrator is a Commission employee, no interim accountings will be made.

### Termination of the Fair Fund

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

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation<sup>1</sup> is designed to compensate investors in the Funds<sup>2</sup> who paid excess performance (aka incentive) fees and management fees to Chatham from January 2016 through December 2018, inclusive (the “Relevant Period”) and incurred losses due to the Respondents’ violations as described in the Order. Investors who did not pay excessive fees to Chatham during the Relevant Period and did not suffer any losses as a result of the Respondents’ violative conduct are ineligible to recover under this Plan. Based upon records obtained by the Commission during its investigation, the Fund Administrator has identified those investors, or their lawful successor who may have paid excess performance or management fees and suffered losses as a result of the Respondents’ failure to correctly calculate the value of the Funds’ holdings.

The Fund Administrator will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as the sum of their performance fees and their management fees paid in excess of what they would have paid had Chatham correctly calculated the Funds’ holdings, as follows:

- A. As part of the Commission’s investigation, Commission staff economists calculated the “Excess Profit Rate”<sup>3</sup> and the “Excess Capital Rate”<sup>4</sup> (both expressed as percentages) attributable to the Respondents’ misconduct in each of the five Funds for each month of the Relevant Period.
- B. “Recognized Loss on Performance Fees” will be calculated as follows.
  - 1. For each Preliminary Claimant invested in any of the Funds during any month of the Relevant Period, the “Monthly Loss from Performance Fees” will be the Excess Profit Rate for that Fund in that month (as calculated in step A above) multiplied by the performance fees paid by the Preliminary

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

<sup>2</sup> The Funds consist of the following hedge funds: the Chatham Asset High Yield Master Fund, Ltd.; the Chatham Asset Private Debt and Strategic Capital Fund, LP; the Chatham Fund, LP; the Chatham Everest Fund, L.P.; and the Chatham Eureka Fund, LP.

<sup>3</sup> Excess Profit Rate is defined as the percentage increase in annual profits due to the Respondents’ violations, was calculated for each Fund for each year of the Relevant Period and applied to each month in the year. For each Fund and year, the Excess Profit Rate was calculated as the difference between (a) the annual increase in the value of the Fund’s holdings less annual cash contributions as reported by the Respondents, and (b) the “corrected” value of the same as calculated by Commission staff economists after removing the inflation in the value of the AMI Bonds in each year, and dividing this difference by (b).

<sup>4</sup> Excess Capital Rate is defined as the percentage increase in the value of month-end holdings due to the Respondents’ violations, was calculated for each Fund at the monthly level. For each Fund and month, the Excess Capital Rate was calculated as the difference between (a) the value of the Fund’s prior month-end holdings plus monthly cash contributions as reported by the Respondents, and (b) the “corrected” value of the same as calculated by Commission staff economists after removing the inflation in the value of the AMI Bonds in each month, and dividing this difference by (b).

Claimant in that month.<sup>5</sup>

2. The Recognized Loss on Performance Fees for a Preliminary Claimant will be the sum of the Monthly Loss from Performance Fees across all months of the Relevant Period and across all Funds held by the Preliminary Claimant during the Relevant Period.<sup>6</sup>

C. “Recognized Loss on Management Fees” will be calculated in a parallel fashion.

1. For each Preliminary Claimant invested in any of the Funds during any month of the Relevant Period, the “Monthly Loss from Management Fees” will be the Excess Capital Rate for that Fund in that month (as calculated in step A above) multiplied by the management fees paid by the Preliminary Claimant in that month.
2. The Recognized Loss on Management Fees for a Preliminary Claimant will be the sum of the Monthly Loss from Management Fees across all months of the Relevant Period and across all Funds held by the Preliminary Claimant during the Relevant Period.

D. A Preliminary Claimant’s Recognized Loss will be the sum of the Recognized Loss from Performance Fees and the Recognized Loss from Management Fees. If the Recognized Loss calculates to a negative number, reflecting a gain, the Recognized Loss will be \$0.00.

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

Any Preliminary Claimant who suffered a Recognized Loss, pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: The Net Available Fair Fund exceeds the sum of Recognized Losses of all Eligible Claimants. Each Eligible Claimant’s distribution amount will equal their Recognized Loss, plus “Reasonable Interest,” if awarded.

Pro Rata Percentage: A *Pro Rata* Percentage computation is intended to measure Eligible Claimants’ Recognized Losses against one another. An Eligible Claimant’s *Pro Rata* Percentage

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<sup>5</sup> For example, if the Excess Profit Rate in a particular Fund in a particular month was 1% and the investor paid \$12,000 in performance fees in that month, the Monthly Loss from Performance Fees would be \$120.

<sup>6</sup> In some months for some Funds, the calculations returned a negative number reflecting an “underpayment” of fees. In the Recognized Loss calculation, these underpayments offset the excess fees in other months. The same treatment applies in paragraph C.2.

will be calculated as the ratio of his, her or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Reasonable Interest: The Fund Administrator, in consultation with the Commission staff, may include interest in the distribution amount to compensate for the time value of money. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, Reasonable Interest will be awarded on a *pro rata* basis from the excess funds.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$25.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible and their distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Each Payee will receive a Distribution Payment equal to their calculated distribution amount. In no event will a Payee receive from the Fair Fund more than their Recognized Loss plus Reasonable Interest, if applicable.