

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21405

In the Matter of

Pinnacle Investments, LLC,

Respondent.

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**PROPOSED PLAN OF
DISTRIBUTION**

I. OVERVIEW

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”) comprised of disgorgement, prejudgment interest, and a civil money penalty paid by Pinnacle Investments, LLC (the “Respondent”) in the above-captioned matter.¹

2. As described more specifically below, the Plan seeks to compensate investors for management advisory fees paid to the Respondent during the four-year period when the Respondent failed to conduct adequate periodic reviews for certain client advisory accounts to determine whether they were being managed in accordance with their investment mandates as described in the Order. 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 all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors who were harmed by the Respondent’s conduct as described in the Order will be compensated for management advisory fees paid to the Respondent during the Relevant Period, as defined below.

¹ See Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and 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, Exchange Act Rel. No. 97448 (May 5, 2023) (the “Order”).

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

II. BACKGROUND

6. On May 5, 2023, the Commission issued the Order instituting and simultaneously settling administrative and cease-and-desist proceedings against the Respondent. In the Order, the Commission found that Pinnacle, a registered investment adviser and broker-dealer, made false and misleading statements in Commission filings regarding reviews of advisory client accounts; failed to adequately disclose its conflicts of interests in connection with the outside business activities and related compensation arrangements of an Investment Adviser Representative with an affiliated fund; failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act concerning reviews of client accounts and conflicts of interest; and failed to deliver required information concerning advisory personnel to its clients. The Commission ordered the Respondent to pay \$83,462 in disgorgement, \$11,874 in prejudgment interest, and a \$393,381 civil money penalty, for a total of \$488,717, to the Commission. The Commission also created the Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty collected, along with the disgorgement and interest collected, can be distributed to harmed investors.

7. The Respondent has paid in full. The Fair Fund has been deposited in a Commission-designated account at the U.S. Department of the Treasury (the “Treasury”), and any accrued interest will be added to the Fair Fund.

III. DEFINITIONS

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

8. **“Administrative Costs”** means any administrative costs and expenses, including without limitation, tax obligations, the fees and expenses of the Tax Administrator and the Fund Administrator, bond premium expenses, and investment and banking costs.

9. **“Certification Date”** means the date established in accordance with this Plan by which a Preliminary Claimant’s Certification Form must be postmarked or submitted electronically in order to be eligible to participate in this distribution. The Certification Date will be 60 days from the mailing of the Plan Notice.

10. **“Certification Form”** means the form that must be completed and signed by each Preliminary Claimant attesting to their name, mailing address, and sufficient information to confirm their tax identification and status. By signing the Certification Form, the Preliminary Claimant swears or affirms that all information provided is accurate and complete to the best of their knowledge and that they are not an Excluded Party as defined in paragraph 14. The

Certification Form may be accompanied by tax forms, as required, relating to the tax treatment of any distribution. All references to the Certification Form in this Plan incorporate by reference any tax forms or other supporting documentation requested in the Plan Notice. If a Preliminary Claimant fails to submit a Certification Form by the Certification Date, the Preliminary Claimant may not be eligible to receive a Distribution Payment.

11. **“Determination Notice”** means the notice sent within 45 days of the Certification Date to any Preliminary Claimant whose Certification Form is deficient, in whole or in part. The Determination Notice will provide the reason(s) for the deficiency and in the event the Preliminary Claimant has been deemed an Excluded Party, the Determination Notice will state the reason(s) for such. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency or request reconsideration of the determination made by the Fund Administrator and provide instructions regarding what is required to do so.

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 Respondent; (b) any present or former officers or directors of the Respondent’s 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 Respondent or any of its affiliates who have been terminated for cause or has otherwise resigned, in connection with the conduct described in the Order; (d) any Person who, as of the Certification Date, has been the subject of criminal charges related to the conduct described in the Order or any related Commission action; (e) the Fund Administrator, their employees, and those Persons assisting the Fund Administrator in their role as the Fund Administrator; and (f) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision will 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 Respondent’s violations described in the Order.

16. **“Final Determination Notice”** means the written notice sent to notify each Preliminary Claimant that they have been determined to be either (a) an Eligible Claimant and confirm their calculated amount of Recognized Loss; or (b) an Unresponsive Preliminary Claimant or an Excluded Party and are not eligible for a distribution. A Final Determination Notice will not be sent to a Preliminary Claimant if their Plan Notice was returned as “undeliverable.” The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the eligibility status and loss calculation and is not subject to appeal.

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 \$20.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

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 sent 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; the Certification Form, along with specification of any information needed from the Preliminary Claimant to prevent them from being deemed an Unresponsive Preliminary Claimant; their calculated 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 their review and analysis of applicable records obtained by the Commission staff during and/or after its investigation, who may have suffered a loss as a result of paying management advisory fees to the Respondent during the Relevant Period; or those Persons who request a Plan Notice, as described in paragraph 45, who are determined by the Fund Administrator to have suffered a loss as a result of paying management advisory fees to the Respondent during the Relevant Period.

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

24. **“Relevant Period”** is from January 1, 2015 through December 31, 2018.

25. **“Unresponsive Preliminary Claimant”** means (a) a Preliminary Claimant whose address the Fund Administrator is not able to verify by the Certification Date; or (b) a Preliminary Claimant who does not timely return the Certification Form and any other information or documentation requested in the Plan Notice, or as specified in their Determination Notice. Unresponsive Preliminary Claimants will not be eligible for a Distribution Payment.

IV. TAX COMPLIANCE

26. On November 13, 2024, the Commission appointed Heffler, Radetich & Saitta, LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.² The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with their 2022-2024 Engagement Letter Agreement with the Commission.³

27. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and will 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. A fund administrator (the “Fund Administrator”) will be appointed to administer the Plan in accordance with Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a).

30. The Fund Administrator will be required to obtain a bond in accordance with Rule 1105(c) of the Commission’s Rules, 17 C.F.R. § 201.1105(c). Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

31. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan.

32. To carry out the purposes of this Plan, the Fund Administrator will be authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff.

² See Order Appointing Tax Administrator, Exchange Act Rel. No. 101612 (Nov. 13, 2024).

³ 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).

If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

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

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

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

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

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

37. Using information obtained during and/or after its investigation, the Commission staff have identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of management advisory fees paid to the Respondent during the Relevant Period.

Distribution Methodology

38. 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 Eligible Claimants.

39. No Distribution Payments will be made for less than \$20.00. If an Eligible Claimant's distribution amount, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$20.00, 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 \$20.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$20.00 will be deemed a Payee and receive a Distribution Payment.

Procedures for Locating and Notifying Preliminary Claimants

40. Within 30 days of Commission approval of the Plan, the Fund Administrator will:

- (a) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan, include a copy of the Plan Notice and Certification Form, and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Preliminary Claimants;
- (b) Establish and maintain a toll-free telephone number for Preliminary Claimants to call and speak to a live representative of the Fund Administrator during their regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund;
- (c) Establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website;
- (d) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Fund Administrator, including their last known physical and email addresses;
- (e) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date; and
- (f) Send a Plan Notice and Certification Form to each Preliminary Claimant's last known email address (if known) and/or mailing address.

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

Undeliverable Mail

42. The Fund Administrator will attempt to locate any Preliminary Claimant whose mailing is returned as "undeliverable" and will document all such efforts. The Fund Administrator will use their best efforts to make use of commercially available resources and other reasonably appropriate means to obtain updated addresses in response to "undeliverable" notices and forward any returned mail for which an updated address is provided or obtained. The Fund Administrator will make available, upon request by the Commission staff, a list of all Preliminary Claimants whose Plan Notice have been returned as "undeliverable" due to incorrect addresses and for which the Fund Administrator has been unable to locate current addresses. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is

unable to find a Preliminary Claimant's correct address, the Fund Administrator, in their discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

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

44. 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.

Procedures to Request Plan Notice

45. Any Person who does not receive a Plan Notice and Certification Form, but is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within 45 days from 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. The Fund Administrator will send the Person a Plan Notice and Certification Form within 15 days of receiving the Person's documentation, if the Fund Administrator determines that the Person should be classified as a Preliminary Claimant.

Certification Requirement and Failure to Respond to Plan Notice

46. To maintain classification as a Preliminary Claimant, a completed Certification Form, together with all supporting documentation as requested in the Plan Notice, must be signed by the Preliminary Claimant and returned to the Fund Administrator by the Certification Date. The Certification Form must be executed by the Preliminary Claimant, unless the Fund Administrator accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Preliminary Claimant's behalf. Those authorized to act on behalf of a Preliminary Claimant will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan.

47. The Fund Administrator will review all Certification Forms. Each Preliminary Claimant has the burden of proof to establish their identity as a Preliminary Claimant or their successor. The Fund Administrator may request, and the Preliminary Claimant has the burden of providing, any additional information and/or documentation deemed relevant by the Fund Administrator.

48. If a Preliminary Claimant fails to return the Certification Form or any requested supporting documentation within 21 days from the initial mailing of the Determination Notice, the Fund Administrator will make no fewer than two attempts to contact the Preliminary Claimant by mail, telephone or email, if known. The second attempt will in no event take place more than 60 days from the initial mailing of the Determination Notice.

Dispute Process

49. Disputes will be limited to the calculation of Recognized Loss. If a Preliminary Claimant disagrees with their Recognized Loss listed in their Plan Notice, such dispute must be detailed on the Certification Form and returned to the Fund Administrator along with any supporting documentation by the Certification Date. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Review of Certification Forms and Deficiency Process

50. The Fund Administrator will provide a Determination Notice within 45 days of the Certification Date to any Preliminary Claimant whose Certification Form is deficient, in whole or in part. The Determination Notice will provide the reason(s) for the deficiency and in the event the Preliminary Claimant is determined to be an Excluded Party, the Determination Notice will state the reason(s) for such. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency or request reconsideration of the determination made by the Fund Administrator and provide instructions regarding what is required to do so.

51. Any Preliminary Claimant with a deficient Certification Form or missing required documentation will have 30 days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

52. Any Preliminary Claimant seeking reconsideration of the Fund Administrator's determination made in the Determination Notice must advise the Fund Administrator in writing within 30 days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of the Fund Administrator's determination.

53. The Fund Administrator has the authority, in its sole discretion, to waive technical deficiencies in the Certification Form.

Final Determination Notices

54. The Fund Administrator will make their final eligibility determination only after reviewing timely responses received to the Determination Notices and investigating any disputes indicated on the Certification Forms regarding the Recognized Losses listed in the Plan Notices.

55. Within 120 days of the Certification Date, a Final Determination Notice will be sent to each Preliminary Claimant notifying them of their final eligibility determination. The Final Determination Notice will notify each Preliminary Claimant that they have been determined to be either (a) an Eligible Claimant and confirm their calculated Recognized Loss; or (b) an Unresponsive Preliminary Claimant or an Excluded Party and are not eligible to receive a Distribution Payment. A Final Determination Notice will not be sent to a Preliminary Claimant if their Plan Notice was returned as "undeliverable." The Final Determination Notice will

constitute the Fund Administrator's final ruling regarding the eligibility status and loss calculation and is not subject to appeal.

Establishment of a Reserve

56. 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").

57. 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 79.

Preparation of the Payment File

58. Within 30 days of sending the Final Determination Notices described in paragraph 55, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the percentage of the Payee's Recognized Loss being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage to include all prior disbursements; (e) the total amount of funds to be disbursed, and if applicable, the total amount of such funds to be withheld pursuant to paragraph 68; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

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

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

61. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the "Escrow Property") will be invested and reinvested in

short-term U.S. Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof. The investment will be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees and to pay Administrative Costs, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the U.S. Government.

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

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

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

Distribution of the Fair Fund

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

66. Upon issuance of an order to disburse, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Fund Administrator will then use their best efforts to commence mailing Distribution Payment checks and/or effect electronic payments within 10 business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

67. All checks will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of 180 days from the date of issuance. Reissuance of a check must be requested before the stale date, and such request is governed by paragraph 73.

68. 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 consult their 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 (“NRAs”) 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.

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

70. 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.

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

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

72. The Fund Administrator will use their best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as “undeliverable.” If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If, within 120 days of the initial mailing of the distribution check, new address information is not available after a diligent search or if the distribution check is returned again, the Fund Administrator will void the distribution check, and at the discretion of the Fund Administrator, the Payee may be removed from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

73. The Fund Administrator will reissue distribution checks 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 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 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 issue an appropriately redrawn distribution check to the requesting party. Reissued checks will be void at the later of 180 days from issuance of the original check

or 60 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.

74. The Fund Administrator 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 Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator 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.

75. The Fund Administrator will make and document their 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 reissue such checks, subject to the time limits detailed herein. If a distribution check remains uncashed after the stale date, the Fund Administrator will instruct the Bank to issue a stop payment on the distribution check. The Fund Administrator, in their 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.

Administrative Costs

76. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission’s Rules. Upon completion of the final distribution, the Fund Administrator will make arrangements, in consultation with the Commission staff, for the final payment of all Administrative Costs.

Receipt of Additional Funds

77. 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

78. 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 in a manner that is consistent with this Plan and in accordance with the Commission’s Rules.

79. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the “Residual”). The Residual may include funds from, among other things, amounts remaining 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.

80. Within 180 days of the stale date of the distribution payments, the Fund Administrator, in consultation with the Commission staff, will determine whether further distribution of the Fair Fund to investors is feasible. Within 10 days of the determination that further distribution is infeasible, the Fund Administrator will direct the issuing financial institution to stop payment on all uncashed distribution payments, and within 45 days, the Fund Administrator will return any funds remaining in the Escrow and Distribution Accounts to the Commission to become part of the Residual

81. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and 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 Respondent 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.

Accountings

82. In accordance with Rule 1105(f) of the Commission's Rules, during the first 10 days of each calendar quarter after funds have been transferred to the Bank, the Fund Administrator will file with the Commission, on a standardized accounting form provided by the Commission staff, an accounting of all monies earned or received and all monies spent in connection with the administration of the Plan.

83. Upon completion of all distributions to Payees and the payment of all Administrative Costs pursuant to the procedures described above, the Fund Administrator will submit a final accounting for approval by the Commission on a standardized form provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

Wind-down and Document Retention

84. The Fund Administrator will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund upon the transfer of any remaining funds to the Commission as described in paragraph 80.

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

Termination of the Fair Fund

86. 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; (c) cancellation of the Fund Administrator's bond; and (d) termination of the Fair Fund.

VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT

87. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the "Notice") will be published on the Commission's website <https://www.sec.gov/litigation/fairfundlist.htm>. Any Person wishing to comment on the Plan must do so in writing by submitting their comments within 30 days of the date of the Notice (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (b) by using the Commission's Internet comment form (<https://www.sec.gov/litigation/admin.shtml>); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File No. 3-21405" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation¹ is designed to compensate investors for management advisory fees paid to the Respondent during a four-year period, from January 1, 2015 through December 31, 2018 (the “Relevant Period”),² when the Respondent failed to conduct adequate periodic reviews for certain client advisory accounts to determine whether they were being managed in accordance with their investment mandates as described in the Order. Based upon records obtained by the Commission during its investigation, the Commission staff has identified those investors, or their lawful successors, who may have suffered losses due to the misconduct of the Respondent.

I. The Methodology

The Fund Administrator will calculate each Preliminary Claimant’s amount of loss (“Recognized Loss”) as the sum of management advisory fees paid by the Preliminary Claimant to the Respondent each year (“Unearned Fees”) during the Relevant Period, based on documents provided by the Respondent and calculations performed by the Commission staff.

II. Recognized Loss

Recognized Loss will be as calculated above. If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

III. Becoming an Eligible Claimant

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.

IV. Allocation of Funds

If the Net Available Fair Fund is equal to or 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 applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal their “*Pro Rata Percentage*” of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the “Minimum Distribution Amount.”

¹ All capitalized terms used herein but not defined have the same meanings ascribed to them in the Plan.

² The Order states the Respondent’s violative conduct spanned from January 2015 to October 2022 (paragraph 1). The Relevant Period for the purposes of loss calculations ends December 31, 2018, prior to the Respondent’s efforts in January 2019 to improve its account review process, advisory compliance program, and conflicts of interest policy, as described in paragraphs 15, 22, and 24 of the Order.

A. Calculating an Eligible Claimant's *Pro-Rata* Percentage

This computation is intended to measure Eligible Claimants' Recognized Losses against one another. Each Eligible Claimant's *Pro-Rata* Percentage will be calculated as the ratio of their Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

B. Reasonable Interest

If the Net Available Fair Fund exceeds the amount necessary to pay all Eligible Claimants their Recognized Loss in full, 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 3%, compounded quarterly from the end of each year that Unearned Fees were paid 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.

C. Minimum Distribution Amount

The Minimum Distribution Amount will be \$20.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible and his, her, or its 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.

D. Becoming a Payee and Distribution Payment

An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee, and will receive a Distribution Payment equal to his, her, or its calculated distribution amount.

In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss, plus Reasonable Interest, if applicable.