

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-22259**

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<b>In the Matter of</b>	:	
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<b>PHX Financial, Inc.</b>	:	<b>PROPOSED PLAN OF</b>
	:	<b>DISTRIBUTION</b>
	:	
<b>Respondent.</b>	:	
	:	

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**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 penalty paid by PHX Financial, Inc. (the “Respondent”) in the above-captioned matter.<sup>1</sup>

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondent’s conduct described in the Order in connection with short-term, high-volume investment strategies the Respondent recommended to certain retail clients from January 1, 2019, to October 31, 2021. 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 will be compensated for their commissions and fees paid for a short-term, high-volume investment strategy recommended by the Respondent from January 1, 2019, to October 31, 2021.

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<sup>1</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Exchange Act Rel. No. 101361 (Oct. 16, 2024) (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 October 16, 2024, 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 during the Relevant Period, a PHX registered representative (“Representative 1”) recommended a short-term, high-volume investment strategy to at least eight of PHX’s retail customers without a reasonable basis. According to the Order, as a result of the high volume of recommended transactions and their attendant commissions and fees, it would have been virtually impossible for these customers to achieve positive returns. The Commission found that while these customers each lost money in their PHX brokerage accounts (the “Accounts”) during the Relevant Period, PHX and Representative 1 together made over \$400,000 in commissions and fees from those Accounts. According to the Order, the Relevant Period encompasses conduct both before and after Regulation Best Interest’s (“Reg BI”) compliance date, June 30, 2020 (the “Pre-Reg BI Period” and “Reg BI Period,” respectively). The Commission found that, during the Pre-Reg BI Period, PHX failed reasonably to supervise Representative 1, within the meaning of Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (“Exchange Act”), with the view to preventing and detecting Representative 1’s violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

7. The Commission further found that, during the Reg BI Period, PHX violated the Reg BI Care Obligation, Exchange Act Rule 15l-1(a)(2)(ii), when Representative 1 recommended a series of transactions to retail customers without a reasonable basis to believe that the recommended transactions, even if in the customers’ best interests when viewed in isolation, were not excessive and in the customers’ best interests when taken together in light of the customers’ investment profiles. Additionally, according to the Order, PHX violated the Reg BI Compliance Obligation, Exchange Act Rule 15l-1(a)(2)(iv), by failing to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI’s Care Obligation. The Commission found that, as a result of PHX’s violations of Reg BI’s Care and Compliance Obligations, it also violated Reg BI’s General Obligation, Exchange Act Rule 15l-1(a)(1), which requires compliance with Reg BI’s component obligations. The Commission ordered the Respondent to pay \$142,995.19 in disgorgement,<sup>2</sup> \$24,993.85 in prejudgment interest, and a \$180,000 civil money penalty, for a total of \$347,989.04, 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 paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

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<sup>2</sup> The Respondent’s ill-gotten commissions and fees, which are the basis of the disgorgement award, are exceeded by investor losses. For this reason, the disgorgement paid by the Respondent will not be sufficient to fully compensate all harmed investors.

8. 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 interest accrued will be added to the Fair Fund.

### III. DEFINITIONS

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

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

10. “**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 90 days from the mailing of the Plan Notice.

11. “**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 15. 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.

12. “**Determination Notice**” means the notice sent within 60 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 will provide instructions regarding what is required to do so.

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

14. “**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.

15. “**Excluded Party**” means (a) the Respondent; (b) any present or former officers or directors of the Respondent 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 their affiliates who has 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; and (d) 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.

16. **"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.

17. **"Final Determination Notice"** means the written notice sent to notify each Preliminary Claimant that they have been determined to be an Eligible Claimant, an Unresponsive Preliminary Claimant, or an Excluded Party. The Final Determination Notices sent to Eligible Claimants will also confirm the calculated amount of their Recognized Losses. The Unresponsive Preliminary Claimants and Excluded Parties will be notified that they 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 constitutes the Fund Administrator's final ruling regarding the eligibility status and loss calculation and is not subject to appeal.

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

19. **"Payee"** means an Eligible Claimant whose distribution amount calculates, in accordance with the Plan of Allocation, to a distribution amount equal to or greater than \$20.00, who will receive a Distribution Payment.

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

21. **"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.

22. **"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.

23. **"Preliminary Claimant"** means a Person or their lawful successors who the Fund Administrator identifies, based on the records available to the Commission, as potentially having suffered a loss in connection with short-term, high-volume investment strategies the Respondent

recommended during the Relevant Period; or those Persons who request a Plan Notice, as described in paragraph 21, who the Fund Administrator determines may have suffered a loss in connection with short-term, high-volume investment strategies the Respondent recommended during the Relevant Period.

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

25. **“Relevant Period”** is from January 1, 2019, to October 31, 2021.

26. **“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

27. On February 11, 2025, 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.<sup>3</sup> The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with their 2025 Engagement Letter Agreement with the Commission.<sup>4</sup>

28. 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).

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

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<sup>3</sup> See Order Appointing Tax Administrator, Exchange Act Rel. No. 102388 (Feb. 11, 2025).

<sup>4</sup> See Omnibus Order Extending 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. 101986 (Dec. 19, 2024).

## V. FUND ADMINISTRATOR

30. Allison J.P. Moon is proposed to be the fund administrator for the Fair Fund (the “Fund Administrator”). As a Commission employee, the Fund Administrator will 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>5</sup> no bond is required since the Fund Administrator is a Commission employee. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan.

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/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 in connection with short-term, high-volume investment strategies the Respondent recommended to certain retail clients from January 1, 2019, to October 31, 2021.

### Distribution Methodology

34. 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.

35. 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 *pro rata* 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.

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<sup>5</sup> 17 C.F.R. § 201.1105(c).

### Procedures for Locating and Notifying Preliminary Claimants

36. Within 60 days of Commission approval of the Plan, the Fund Administrator will send the Plan Notice and Certification Form to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

37. 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. 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 her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

38. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice should promptly communicate any change in address or contact information to the Fund Administrator.

### Procedures to Request Plan Notice

39. 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](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within 30 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 60 days of the approval of the Plan, if the Fund Administrator determines that the Person should be classified as a Preliminary Claimant.

### Certification Requirement and Failure to Respond to Plan Notice

40. 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.

41. 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.

42. If a Preliminary Claimant fails to return the Certification Form or any requested supporting documentation within 30 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

43. Disputes will be limited to calculation of Recognized Loss. If a Preliminary Claimant disagrees with the Recognized Loss listed in the 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

44. The Fund Administrator will provide a Determination Notice within 60 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.

45. 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.

46. 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.

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

#### Final Determination Notices

48. The Fund Administrator will make her 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.

49. Within 120 days of the Certification Date, a Final Determination Notice will be sent to notify each Preliminary Claimant 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

50. 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”).

51. 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 65.

#### Preparation of the Payment File

52. Within 300 days of Commission approval of the Plan, 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”) to make disbursements through the Treasury.

#### Distribution of the Fair Fund

53. Pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), the Commission staff will obtain an order from the Commission authorizing the disbursement of funds from the Net Available Fair Fund for distribution to Payees in accordance with the Payee List. The Treasury will mail checks or electronically transfer funds to each Payee as instructed by the Fund Administrator in accordance with the Payee List.

54. All checks will bear a stale date of one year from the date of issuance. Reissuance of a check must be requested before the stale date, and such request is governed by paragraph 59.

55. 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 one year 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.

56. 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.

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

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

58. The Fund Administrator will use her 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 90 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 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.

59. 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 one year from the reissuance, and in no event will a check be reissued after one year from the date of the original issuance without the approval of Commission staff.

60. 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.

61. The Fund Administrator will make and document her 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. 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 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.

#### Administrative Costs

62. 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 arrange for the final payment of all Administrative Costs.

#### Receipt of Additional Funds

63. 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

64. If funds remain following the initial distribution, the Fund Administrator may seek subsequent distribution(s) of any available remaining funds, in a manner consistent with this Plan and in accordance with the Commission's Rules.

65. 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.

66. Within 60 days of the stale date of the distribution payments, the Fund Administrator will determine whether further distribution of the Fair Fund to investors is feasible. Within 10 days of the determination that further distribution is infeasible, any remaining funds will become part of the Residual.

67. The Residual 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 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

68. When all funds have been disbursed, except for the Residual described in paragraph 65 of the Plan, 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 funds are being held in a Commission-designated account at the Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

#### Termination of the Fair Fund

69. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all the following have occurred (a) a final accounting has been submitted by the Fund Administrator and approved by the Commission; and (b) all Administrative Costs have been paid. 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, and any amounts returned to the Fair Fund in the future that are 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.

### **VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT**

70. 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](mailto:rule-comments@sec.gov). Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File No. 3-22259" 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 Allocation<sup>1</sup> is designed to compensate certain retail investors based on their commissions and fees paid for a short-term, high-volume investment strategy recommended by the Respondent from January 1, 2019, to October 31, 2021 (the “Relevant Period”).

Investors who did not pay commissions or fees during the Relevant Period in connection with a short-term, high-volume investment strategy recommended by the Respondent are ineligible to recover under this Plan.

Based upon records obtained by the Commission during and/or after its investigation, the Fund Administrator has identified those investors, or their lawful successors, who may have suffered a loss by paying commissions or fees during the Relevant Period due to the misconduct of the Respondent (“Preliminary Claimants”).

#### **I. The Methodology**

The Fund Administrator will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as follows:

The Recognized Loss is the sum of all commissions and fees paid by the Preliminary Claimant to the Respondent in connection with a short-term, high-volume investment strategy during the Relevant Period.

#### **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.

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.

#### **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.

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

#### **IV. Allocation of Funds**

Because 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, subject to the "Minimum Distribution Amount."

##### **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. 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 their distribution amount will be reallocated *pro rata* to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

##### **C. Becoming 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 their calculated distribution amount. In no event will a Payee receive from the Fair Fund more than their Recognized Loss.