

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:21-CV-19313-ZNQ-TJB
)	
SWAPNIL J. REGE, SWAPSTAR CAPITAL, LLC, AND REEMA REGE,)	
)	
)	
Defendants.)	

(PROPOSED) PLAN OF DISTRIBUTION

I. OVERVIEW

1. Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) submits this Proposed Plan of Distribution (the “Plan”) to distribute the Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Swapnil J. Rege (“Mr. Rege”), SwapStar Capital, LLC (“SwapStar”) (collectively, the “Defendants”) and Reema Rege (“Ms. Rege” or “Relief Defendant”) in this proceeding. This Plan was developed in accordance with the Commission’s practices and procedures customary in Fair Fund distributions.

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Defendants’ conduct alleged in the Complaint, including the following: misusing and misappropriating client funds; making false oral and written statements to clients indicating that their funds were invested and earning returns; otherwise engaging in conduct which operated as a fraud and deceit on the Defendants’ clients while acting as an investment adviser; and Mr. Rege’s failure to disclose that a prior Commission order¹ barred him from acting as or associating with any investment adviser. As calculated using the methodology detailed in the Plan of Allocation, investors will be compensated based on their net amounts transferred to the Defendants for investment purposes from January 1, 2019, through October 31, 2021, both dates inclusive (the “Relevant Period”) due to the conduct of the Defendants alleged in the Complaint.

3. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

¹ *In the Matter of Swapnil Rege*, Admin. Proc. File No. 3-19257, Investment Advisers Act Rel. No. 5303 (July 18, 2019) (the “2019 Administrative Proceeding”).

II. BACKGROUND

4. On October 26, 2021, the SEC filed a Complaint against the Defendants (the “Complaint”). Dkt. 1. In the Complaint, the SEC alleged that, from mid-2019 through October 2021, Mr. Rege, the sole owner of SwapStar since its inception, acted as an investment adviser and continued to associate with an investment adviser in violation of the investment adviser bar imposed by the SEC on July 18, 2019, in the 2019 Administrative Proceeding. According to the Complaint, Mr. Rege failed to disclose his bar from acting as an investment advisor to his clients and misrepresented the nature of the Commission enforcement action filed against him. The SEC further alleged that Mr. Rege and SwapStar engaged in a scheme to misappropriate assets from clients they advised by instructing clients to deposit funds for investment into bank accounts associated with Mr. Rege or SwapStar, claiming the funds would then be transferred to brokerage accounts. According to the Complaint, Mr. Rege and SwapStar instead used a significant portion of the funds deposited by their advisory clients for Mr. Rege’s personal expenses. Finally, the SEC alleged that the only brokerage accounts to which Mr. Rege or SwapStar transferred client funds were two accounts held in the name of Ms. Rege, rendering her in possession of funds to which she had no legitimate claim and which she received because of Mr. Rege’s and SwapStar’s unlawful behavior.

5. On August 23, 2022, the Court entered Final Judgments against the Defendants (the “Final Judgments”). Dkts. 29 – 31. The Final Judgments against Mr. Rege and SwapStar ordered them to pay, jointly and severally, a total of \$5,469,926 in disgorgement, prejudgment interest, and civil penalties to the Commission. Dkt. 30-31. The Final Judgment against Ms. Rege ordered the transfer of certain frozen assets to the Commission. Dkt. 29. The Final Judgments additionally ordered the Commission to hold all funds, together with interest and income earned thereon (collectively, the “Fund”) pending further order of the Court. The Final Judgments established that the Commission may propose a plan to distribute the Fund subject to the Court’s approval and that such a plan may provide for the Fund to be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

6. On August 25, 2022, by consent, the SEC issued a second Order barring Mr. Rege from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.²

7. On January 17, 2024, this Court entered an Order establishing a Fair Fund (the “Fair Fund”), appointing Miller Kaplan Arase LLP (“MKA”) as tax administrator (the “Tax Administrator”) of the Fair Fund, and authorizing the SEC to approve payment of the Fair Fund’s tax obligations and the related fees and expenses of the Tax Administrator without further order of the Court. Dkt. 35.

8. On March 8, 2024, the Court entered an Order appointing Analytics Consulting, LLC (“Analytics”) as distribution agent (the “Distribution Agent”) of the Fair Fund and authorizing the SEC to approve payment of the Distribution Agent’s fees for administration without further order of the Court. Dkt. 37.

² *In the Matter of Swapnil Rege*, Admin. Proc. File No. 3-21007, Investment Advisers Act Rel. No. 6097 (Aug. 25, 2022).

9. The Fair Fund consists of \$1,237,532.60 paid by the Defendants pursuant to the Final Judgments, plus accrued interest and earnings. The Fair Fund is currently held in an SEC-designated account with the United States Department of the Treasury for investment. Funds collected from or paid by the Defendants or the Relief Defendant pursuant to the Final Judgments in the future, as well as interest accrued will be added to the Fair Fund.

III. DEFINITIONS

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

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

11. **“Claim Form”** means the form designed by the Distribution Agent, in consultation with the Commission staff, for the filing of claims in accordance with this Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Preliminary Claimant’s transfer of funds to Defendants for investment purposes during the Relevant Period such that eligibility under the Plan can be determined, tax identification and other related information from the Preliminary Claimant as determined necessary by the Distribution Agent in coordination with the Tax Administrator, and a certification that the Preliminary Claimant is not an Excluded Party.

12. **“Claim Status Notice”** means the notice sent by the Distribution Agent within sixty (60) days of the Claims Bar Date to all Preliminary Claimants that submitted a deficient Claim Form. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is denied, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

13. **“Claims Bar Date”** means the date established in accordance with this Plan by which a Preliminary Claimant’s Claim Form must be postmarked or submitted electronically in order to receive consideration under the Plan. The Claims Bar Date shall be one hundred and twenty (120) days after the initial mailing of the Plan Notice. Claim Forms submitted by Preliminary Claimants postmarked or received after the Claims Bar Date will not be accepted unless the Distribution Agent is directed to do so by the Commission staff.

14. **“Claims Packet”** means the materials relevant to submitting a claim that will be provided to Preliminary Claimants who request such materials through a website or otherwise prior to the Claims Bar Date. The Claims Packet will include, at a minimum, a copy of the Plan Notice and a Claim Form (together with instructions for completion of the Claim Form).

15. **“Determination Notice”** shall mean the written notice sent by the Distribution Agent to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary

Claimant of its eligibility determination. The Determination Notice will further provide each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

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

17. **"Eligible Claimant"** means a Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation.

18. **"Excluded Party"** shall mean:

- (a) The Defendants and Relief Defendant;
- (b) Present or former officers or directors of Defendants or any assigns, creditors, agents, 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 Defendants or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct alleged in the Complaint;
- (d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct alleged in the Complaint or any related Commission action;
- (e) Any firm, trust, corporation, officer, or other entity in which Defendants has or had a controlling interest;
- (f) The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; or
- (g) 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.

The Claim Form will require Preliminary Claimants to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Fair Fund.

19. **"Fair Fund"** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants' violations alleged in the Complaint. Any additional funds collected from the Defendants, pursuant to the Final

Judgments will be added to the Fair Fund.

20. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

21. **“Payee”** means an Eligible Claimant whose Recognized Loss is equal to or greater than \$20.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

22. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

23. **“Plan Notice”** means a written notice from the Distribution Agent to Preliminary Claimants informing them of the Fair Fund; the Plan and its eligibility requirements; explaining how to submit a claim, including instructions for any online claims process; and how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund’s website. The Plan Notice will also be available on the Fair Fund’s website that is maintained by the Distribution Agent.

24. **“Plan of Allocation”** means the methodology used by the Distribution Agent to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

25. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Distribution Agent as having a possible claim to recover from the Fair Fund under this Plan, or a Person or entity asserting prior to the Claims Bar Date that he, she, or it has a possible claim to recover from the Fair Fund under this Plan, as a result of Defendants’ violations alleged in the Complaint.

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

27. **“Relevant Period”** means the period from January 1, 2019, through October 31, 2021, both dates inclusive

28. **“Summary Notice”** means the notice published in print or internet media that shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Claims Bar Date. The Summary Notice will be published electronically within ten (10) days of the initial mailing of the Plan Notice.

29. **“Third-Party Filer”** means a third-party, including without limitation a nominee, custodian, or an intermediary holding in street name, who is authorized to submit and submits a claim(s) on behalf of one or more Preliminary Claimants. Third-Party Filer does not include assignees or purchasers of claims that are excluded from receiving Distribution Payments under paragraph 18(g) above.

IV. TAX COMPLIANCE

30. On January 17, 2024, the Court appointed MKA as the tax administrator of the Fair Fund to handle the tax obligations of the Fair Fund. Dkt. 35. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

31. 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 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.

V. DISTRIBUTION AGENT

32. On March 18, 2024, the Court appointed Analytics as the distribution agent for the Fair Fund. Dkt. 37. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify and contact Preliminary Claimants; obtain accurate mailing information for Preliminary Claimants; developing a claims database; establishing a website and staffing a call center to address inquiries regarding the Plan; disseminating the Plan Notice; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); advising Preliminary Claimants of deficiencies in claims and providing an opportunity to cure any document defects; taking antifraud measures, such as identifying false, ineligible, and overstated claims; making determinations under the criteria established herein as to Preliminary Claimant eligibility; advising Preliminary Claimants of final claim determinations; disbursing the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

33. To carry out the purposes of this Plan, the Distribution Agent 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, Court approval is required prior to implementation by amending the Plan.

34. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

35. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Plan and all Preliminary Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Plan.

36. The Distribution Agent is 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 shall be deemed to be agents of the Distribution Agent under this Plan.

37. The Distribution Agent may be removed at any time by the Court and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

VI. ADMINISTRATION OF THE FAIR FUND

Identification of and Notification to Preliminary Claimants

38. The Distribution Agent will, insofar as practicable, use its best efforts to identify Preliminary Claimants from a review of trading records, records available from the Commission staff and from any other source available to it. The Distribution Agent may also engage a third-party firm, after consultation with and approval of the Commission staff, to assist in identifying Preliminary Claimants to maximize the participation rate in the Fair Fund.

39. Within forty-five (45) days of the Court's approval of the Plan, the Distribution Agent shall:

- (a) design and submit a Claims Packet, including the Plan Notice and the Claim Form, to the Commission staff for review and approval;
- (b) create a mailing and claim database of all Preliminary Claimants based upon information identified by the Distribution Agent;
- (c) 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;
- (d) email and/or mail a Plan Notice to each Preliminary Claimant identified by the Distribution Agent based upon available information;

- (e) establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website, located at RegeFairFund.com, will make available a copy of the approved Plan; provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions; include in downloadable form, the Claim Form and other related materials; and such other information the Distribution Agent believes will be beneficial to Preliminary Claimants;
- (f) establish and maintain a toll-free telephone number, 1-888-391-3385, for Preliminary Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The toll-free number will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Fair Fund's website; and
- (g) establish and maintain a traditional mailing address and an email address, info@RegeFairFund.com, which will be listed on all correspondence from the Distribution Agent to Preliminary Claimants as well as on the Fair Fund's website.

40. The Distribution Agent will publish the Summary Notice on the internet acceptable to Commission staff within ten (10) days of the initial mailing of the Plan Notice.

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

42. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with the calendar date, which is one hundred and twenty (120) days from the date of the initial mailing of the Plan Notice.

43. The Distribution Agent will promptly provide a Claims Packet to any Preliminary Claimant upon request made via mail, phone, or email prior to the Claims Bar Date.

44. The Distribution Agent will attempt to locate any Preliminary Claimant whose mailing is returned as "undeliverable" and will document all such efforts. The Distribution Agent shall use its 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 Distribution Agent 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 Distribution Agent has been unable to locate current addresses.

Filing a Claim

45. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Preliminary Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Preliminary Claimant's claim, together with all required supporting documentation as the Distribution Agent, in its discretion, deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third-party documentary evidence of the transfer of funds to Defendants and related transactions during the Relevant Period.

46. Electronic claims submission is encouraged; the Plan Notice will include instructions on how Preliminary Claimants can submit their claims electronically via the Fair Fund's website. If using the web-based claim filing option, a Preliminary Claimant must submit his, her, or its claim to the Distribution Agent by 11:59 p.m. EST on the Claims Bar Date. The Plan Notice will also include instructions for submission of claims if the Preliminary Claimant is unable to submit his, her, or its claim electronically.

47. The burden will be upon the Preliminary Claimant to ensure that his, her or its Claim Form has been properly and timely received by the Distribution Agent. A Claim Form that is postmarked or otherwise received after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent for good cause shown, after consultation with the Commission staff.

48. All Claim Forms and supporting documentation necessary to determine a Preliminary Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be endorsed by a declaration executed by the Preliminary Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Preliminary Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

49. The Preliminary Claimant has the burden of notifying the Distribution Agent of a change in his, her or its current address and other contact information, and ensuring that such information is properly reflected on the Distribution Agent's records.

50. When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Fund Administrator in this matter. Third-Party Filers that do not comply with the template provided by the Fund Administrator may be rejected. Third-Party Filers must also submit a signed master proof of claim and release as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim.

51. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Third-Party Filers must submit such supporting documentary evidence of investments as the Fund Administrator deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Preliminary Claimant (beneficial account owner) and its TIN (for individuals) or EIN (for companies); sufficient contact information to confirm the identity of the beneficial owner; and documentation from the original bank, broker or other institution of investments (account statements, confirmations and other documentation of

purchases and dispositions). The Fund Administrator will have the right to request, and the Third-Party Filer will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed necessary by the Fund Administrator to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Fund Administrator will result in rejection of the affected claim(s). The determination of the Fund Administrator to reject a claim for insufficient documentation, as reflected on the Determination Notice, is final and within the discretion of the Fund Administrator.

52. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Fund Administrator will distribute any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

Review of Claims and Deficiency Process

53. The Distribution Agent will review all claim submissions and determine the eligibility of each Preliminary Claimant to participate in the Fair Fund by reviewing claim data and supporting documentation (or the lack thereof) and verifying the claim. Each Preliminary Claimant will have the burden of proof to establish the validity and amount of his, her or its claim. The Distribution Agent will have the right to request, and the Preliminary Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

54. The Distribution Agent will provide a Claim Status Notice within sixty (60) days of the Claims Bar Date to each Preliminary Claimant who has filed a deficient claim with the Distribution Agent. The Claim Status Notice will provide to each Preliminary Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to provide required information or documentation). In the event the claim is denied, in whole or in part, the Claim Status Notice will state the reason(s) for such denial. The Claim Status Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or dispute the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

55. Any Preliminary Claimant with a deficient claim will have thirty (30) days from the date of the Claim Status Notice to cure any deficiencies identified in the Claim Status Notice.

56. Any Preliminary Claimant seeking reconsideration of a denied claim must advise the Distribution Agent in writing within thirty (30) days of the date of the Claim Status Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

57. The Distribution Agent will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims.

All determinations made by the Distribution Agent in accordance with the Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

Claims Eligibility Determination

58. Within one hundred and twenty (120) days of the Claims Bar Date, the Distribution Agent will complete all claims determinations and send a Determination Notice to all Preliminary Claimants who timely submitted a Claim Form notifying the Preliminary Claimant of its eligibility determination. The Determination Notice will further provide to each Preliminary Claimant that is determined to be an Eligible Claimant with his, her, or its calculated Recognized Loss. The Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility status of the claim.

59. The Distribution Agent may consider disputes of an Eligible Claimant's Recognized Loss calculation if notice of the dispute is presented in writing to the Distribution Agent within thirty (30) days of the date of the Determination Notice. The Distribution Agent will consult with Commission staff as appropriate. Within thirty (30) days of receiving an Eligible Claimant's notice of dispute, the Distribution Agent will notify the Eligible Claimant, in writing, of its calculation of the Eligible Claimant's Recognized Loss after considering the dispute. This notice will constitute the Distribution Agent's final ruling regarding the loss calculations for the claim.

Distribution Methodology

60. Any Preliminary Claimant, who is not an Excluded Party, who submitted a valid Claim Form and has suffered a Recognized Loss, as calculated in accordance with the Plan of Allocation, attached hereto, will be deemed an Eligible Claimant.

61. No Distribution Payments will be made for less than \$20.00. If an Eligible Claimant's distribution amount calculates to less than \$20.00, in accordance with the Plan of Allocation, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment 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 \$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.

Establishment of a Reserve

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

63. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 88 below.

Preparation of the Payment File

64. Within sixty (60) days following the date of the Determination Notices described above, paragraph 58, the Distribution Agent 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 Distribution Agent will also provide a Declaration 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 (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

65. Prior to the disbursement of funds from the Net Available Fair Fund, the Distribution Agent 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.

66. The Distribution Agent, pursuant to the Escrow Agreement, shall 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 shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

67. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the “Escrow Property”), shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees, tax obligations, and/or fees of the Tax Administrator and/or Distribution Agent, 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 United States Government.

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

69. The Distribution Agent shall 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. In consultation with Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Distribution Account.

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

Distribution of the Fair Fund

71. The Distribution Agent will seek to distribute the Net Available Fair Fund to all Payees only after all Claim Forms have been processed and all Preliminary Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth herein.

72. Upon the Commission's staff's receipt, review, and acceptance of the Payee List and Declaration from the Distribution Agent, the Commission will petition the Court for authority to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Distribution Agent in accordance with the Plan. The Payee List shall, upon request, be made available to the Court under seal. All disbursements will be made pursuant to a Court Order.

73. Upon issuance of an order to disburse by this Court, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Distribution Agent will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within ten (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.

74. All Distribution Payments will be issued by the Distribution Agent from the Distribution Account. All checks will bear a stale date of one hundred twenty (120) 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 he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except if a check reissue has been requested before the stale date, such request is governed by paragraph 82.

75. All 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 his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one hundred twenty (120) days from the date the original check was issued; and (d) contact information for the Distribution Agent 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 submitted to the Commission staff for review and approval.

76. 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 Court to compensate investors for harm as a result of securities law violations.

77. Distribution Payments must be made by check or electronic payment payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Distribution Agent in consultation with the Commission staff and must be authorized by the Payee.

78. The submission of a Claim Form and the receipt and acceptance of a Distribution Payment by a Payee is not intended to be a release of a Payee's rights and claims against any party.

79. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments to the harmed investors who qualify as Payees in accordance with the Plan of Allocation. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff.

80. At the discretion of the Distribution Agent, 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 Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

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

81. The Distribution Agent 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 Distribution Agent as "undeliverable." If new address information becomes available, the Distribution Agent 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 one hundred twenty (120) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent is unable to find a Payee's correct address, the Distribution Agent, in its 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.

82. The Distribution Agent may reissue Distribution 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) or to take possession of the funds and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change.

The Fund Administrator will have the right to request, and the Payee will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed necessary by the Fund Administrator to substantiate the basis for the request for reissuance. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is consistent with this Plan and properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party with the approval of the Commission staff. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or thirty (30) days from the reissuance, and in no event will a check be reissued after one hundred and twenty (120) days from the date of the original issuance without the approval of Commission staff.

83. The Distribution Agent will make reasonable efforts to contact Payees who have failed to negotiate their Distribution Payment check and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks subject to the time limits detailed in paragraph 82 above.

Administrative Costs

84. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third-parties retained by the Distribution Agent in furtherance of its duties), which shall be paid from the Fair Fund. The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a quarterly basis directly to Commission staff pursuant to the Court's March 8, 2024 Order, for payment from the Fair Fund without further Court Order.

85. Pursuant to the Court's Order entered on January 17, 2024, the Tax Administrator will invoice all taxes and fees and expenses for the administration of the Fair Fund directly to Commission staff, for payment from the Fair Fund without further Court Order.

86. All Administrative Costs shall be paid from the Fair Fund, pursuant to a Court Order and shall be reflected in the final accounting referenced below. All Administrative Costs will be paid from the Fair Fund in accordance with a Court order.

Disposition of Undistributed Funds

87. If funds remain following the initial distribution, the Distribution Agent, in consultation with the Commission staff, may seek subsequent distribution(s) of any remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to the Court's order.

88. 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 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 received due to the Fair Fund's overpayment of taxes or for waiver of IRS penalties.

89. Once the Distribution Agent, in consultation with the Commission staff, deems further distribution of the Fair Fund to investors infeasible, the Distribution Agent will direct any uncashed Distribution Payments to be voided, and return any funds remaining in the Escrow and Distribution Accounts to the Commission to become part of the Residual.

90. All funds remaining in the Residual that are infeasible to distribute to investors will be held by the Commission pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual. If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.³

Filing of Reports and Accountings

91. The Distribution Agent shall file with the Court and provide to Commission staff, a progress report, pursuant to and in a format to be provided by Commission staff, within forty-five (45) days of Court approval of this Plan, and shall file with the Court and provide to the Commission staff additional progress reports within twenty (20) days after the end of every quarter thereafter.

92. The progress reports shall inform the Court and the Commission staff of the activities and status of Fair Fund during the relevant reporting period, and once funds are transferred to the Bank it will specify, at a minimum: (a) the location of the account(s) comprising the Fair Fund; and (b) an interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Payees, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Plan.

93. Upon completion of all distributions to Payees and payment of all Administrative Costs, 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. In addition, pursuant to the procedures described above, the Distribution Agent will submit to the Commission staff a final accounting, on a standardized form provided by the Commission staff. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. §78u(d)(7).⁴ The Commission may recommend transfer of the Residual to the

³ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

⁴ Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6510(b).

general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.

Receipt of Additional Funds

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

Wind-down and Document Retention

95. The Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Distribution Agent determines with the concurrence of the Commission staff.

96. The Distribution Agent will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (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 Distribution Agent 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

97. Once the Commission staff has reviewed and accepted the final accounting, the Commission will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

98. The Fair Fund will be eligible for termination and the Distribution Agent 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 Distribution Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) any amounts remaining in the Fair Fund that are infeasible to return to investors, and any amounts returned to the Fair Fund in the future that are infeasible to return to investors, are transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

99. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

PLAN OF ALLOCATION

This Plan of Allocation¹ is designed to compensate investors based on their net amounts transferred to the Defendants for investment purposes from January 1, 2019, through October 31, 2021, both dates inclusive (the “Relevant Period”) due to the conduct of the Defendants alleged in the Complaint. Investors who did not transfer money to the Defendants for investment during the Relevant Period, or who are an Excluded Party, are ineligible to recover under this Plan.

I. The Methodology

The Fund Administrator will calculate the amount of loss (“Recognized Loss”) for each Preliminary Claimant as the total dollar amount transferred by the Preliminary Claimant to the Defendants during the Relevant Period for investing (including any commissions or fees paid to the Defendants in connection with the investment), less the total dollar amount received back from Defendants during the Relevant Period. If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

II. Additional Provisions

Transfers that occurred outside the Relevant Period will be excluded from the calculation of the Recognized Loss.

III. Becoming An Eligible Claimant

A Preliminary Claimant, who is not an Excluded Party, who submits a valid Claim Form and has suffered a Recognized Loss, as calculated above, 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 his, her, or its Recognized Loss, *plus* any “Reasonable Interest” awarded. 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 his, her or its “*Pro-Rata Percentage*” of the Net Available Fair Fund. In either case, the distribution amount will be subject to the “Offset for Prior Recovery” and “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 for each Eligible Claimant as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

B. Offset for Prior Recovery

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

To avoid payment of a windfall, an Eligible Claimant's distribution amount will be no larger than his, her, or its Recognized Loss *minus* 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 ("Prior Recovery"). That is, the distribution amount will be capped at the Recognized Loss *less* the Prior Recovery.

C. Reasonable Interest

If the Net Available Fair Fund exceeds the amount necessary to pay all Eligible Claimants their Recognized Loss (*minus* any Prior Recovery) in full, the Distribution Agent, 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.

D. 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 may be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

E. 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.