

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

**ADMINISTRATIVE PROCEEDING  
File No. 3-12448**

**In the Matter of**

**Strong Capital Management, Inc.,**

**Respondent.**

**PROPOSED PLAN OF  
DISTRIBUTION**

**I. Overview.**

**A. Factual Background.**

1. This Plan of Distribution, prepared by Strong Capital Management (“SCM” or “Strong”), outlines a methodology to distribute funds to former shareholders of the Strong High-Yield Municipal Bond Fund, Inc. (“HYMBF”), formerly advised by SCM, a wholly-owned subsidiary of Strong Financial Corporation (together with SCM, “Strong”), a Wisconsin corporation. On September 29, 2006, the U.S. Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 203(e) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 against SCM (Release No. IA-2560, Admin. Proc. File No. 3-12448 (the “Order”)). SCM agreed to the entry of the Order to settle enforcement proceedings resulting from an investigation by the Commission into certain disclosures concerning forbearance agreements in the HYMBF’s 2002 and 2003 annual and semiannual reports to shareholders. As required by the Order, on approximately October 4, 2006, SCM paid \$2,185,927.60 (the “Settlement Amount”) to the Commission, which then deposited the Settlement Amount with the U.S. Treasury Bureau of Public Debt (“BPD”).

2. As required by the Order, the Settlement Amount was placed in a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the “Fair Fund”). Section 308(a) of the Sarbanes-Oxley Act provides: “If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the

Commission obtains an order requiring disgorgement against any person for violating such laws or the rules and regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.” Included in the Fair Fund were \$1,004,371.50 in disgorgement, \$181,556.10 in prejudgment interest, and a \$1,000,000 penalty paid by SCM. As of July 2011, the value of the Fair Fund, including interest, was \$2,311,640, and it continues to accrue interest through investments at the BPD.

3. SCM served as the investment advisor to the HYMBF, which was one of approximately 70 Strong mutual funds (the “Strong Funds”). The HYMBF was the only series of Strong High Yield Municipal Bond Fund, Inc., a Wisconsin registered investment company. Effective May 28, 2004, the HYMBF closed to new shareholders. Subsequently, the HYMBF's board of directors approved a plan of liquidation for the HYMBF. In accordance with this plan of liquidation, the HYMBF redeemed all its outstanding shares on December 29, 2004.<sup>1</sup>

---

<sup>1</sup> On December 31, 2004, Strong entered into an asset purchase agreement with Wells Fargo and Company. This agreement, which did not include the assets in the HYMBF, ultimately resulted in the reorganization of the other Strong Funds into the Wells Fargo Advantage Funds in April 2005. SCM filed for deregistration with the Commission in May 2005. On January 18, 2006, the Commission issued an order declaring the HYMBF's deregistration under the Investment Company Act effective. Strong has no ongoing business activities relating to the mutual fund industry.

**B. Distribution Plan.**

4. Paragraph 21 of the Order provides that “[SCM] has undertaken pursuant to Rule 1101 of the Commission's Rules on Fair Fund and Disgorgement Plans [17 C.F.R. §201.1101], and in consultation with the staff of the Commission, to develop a plan for the distribution of the disgorgement and civil penalties (“Distribution Plan”) to be submitted to the Commission for notice in accordance with Rule 1103 [17 C.F.R. §201.1103]. Following a Commission order approving a Distribution Plan, as provided in Rule 1104 [17 C.F.R. §201.1104], [SCM] shall take all necessary and appropriate steps to assist the Commission-appointed Administrator in effecting the administration of the final Distribution Plan. [SCM] shall bear the costs of administering and implementing the final Distribution Plan.”

5. This submission constitutes the Distribution Plan required by Paragraph 21 of the Order. As required by Paragraph 21 of the Order, this Distribution Plan has been submitted to the staff of the Commission (“Staff”). The Distribution Plan is subject to approval by the Commission. As further provided in Paragraph 21 of the Order, following the Commission’s approval of the Plan, the Fund Administrator (defined below) will take all necessary and appropriate steps to administer the final Distribution Plan. The Staff may extend any procedural deadline for good cause shown. The Commission retains jurisdiction over the implementation of the Distribution Plan.

6. The Fair Fund constitutes a qualified settlement fund (“QSF”) under Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B(g)-1 through 1.468b(g)-5.

**C. Distribution Methodology.**

7. According to the Order, SCM made a materially misleading statement and failed to disclose material facts relating to forbearance agreements in the HYMBF's 2002 and 2003 semiannual and annual reports to shareholders. As a result, the Order finds that SCM's semiannual and annual reports contained inadequate disclosure relating to forbearance agreements during approximately the last six months of calendar year 2002, the entire calendar year 2003, and the first six months of calendar year 2004.<sup>2</sup> SCM has shareholder records from the relevant period for December 31, 2002, December 31, 2003, and month-end dates during the first six months of 2004 readily available. Daily shareholder records for the relevant period are available, but at a significant cost that would be prohibitive in light of the size of the Fair Fund. Accordingly, it is appropriate to propose a plan of distribution according to a schedule that distributes the Fair Fund on a pro rata basis to shareholders of the HYMBF according to the following schedule: 25% to shareholders who owned shares in the HYMBF as of December 31, 2002, 50% to shareholders who owned shares in the HYMBF as of December 31, 2003, and 25% to shareholders who owned shares in the HYMBF as of June 30, 2004. In accordance with this schedule, the Settlement Amount plus interest earned on the Settlement Amount through the date of approval of the Distribution Plan by the Commission (subject to any tax liabilities of the Fair Fund) will be distributed. The total amount distributed for each date of December 31, 2002, December 31, 2003, and June 30, 2004 will be paid to holders of HYMBF shares on that date, according to the ratio of each shareholder's

---

<sup>2</sup> The HYMBF's 2004 semiannual report to shareholders, which the Order does not find contained any material misstatements or omissions, was filed on July 7, 2004.

holdings to the total number of shares issued by the fund. Therefore, the distribution formula represents a fair and reasonable method of distribution of the Fair Fund to shareholders of the HYMBF.

## **II. Administration of the Plan.**

### **A. Appointment of Administrators.**

8. Rule 1101(b)(6) of the Commission's Rules of Practice requires a Distribution Plan to provide procedures for the administration of the fund, including the selection of a fund administrator "to oversee the fund, process claims, prepare accountings, file tax returns, and, subject to the approval of the Commission, make distributions from the fund to investors who were harmed by the violation."

9. The duties of the fund administrator (the "Fund Administrator") will be performed by Michael R. Gibbons, the I.W. Burnham II Professor of Investment Banking at the Wharton School of the University of Pennsylvania. Professor Gibbons has also been appointed as Independent Distribution Consultant in connection with a separate Commission proceeding against SCM and certain other Strong-related persons and entities (the "Prior Proceeding"). In the Prior Proceeding, Professor Gibbons is working with BNY Mellon Asset Servicing ("BNY Mellon"),<sup>3</sup> a wholly-owned subsidiary of Bank of New York Mellon Corporation, in the performance of various duties necessary to the administration of the fund, and it is proposed that he do so in this case as well, as is further detailed below. BNY Mellon's fees and expenses for this plan will be borne by

---

<sup>3</sup> BNY Mellon is one of the nation's largest full-service mutual fund transfer agents and a leading provider of processing, technology and business solutions to the global investment industry. BNY Mellon offers fund accounting and administration, transfer agency, custody, and sub-accounting services for more than 62 million shareholder accounts, representing more than \$1.9 trillion in total assets, as well as settlement administration services.

Strong. The appointment of Professor Gibbons as Fund Administrator in this proceeding will not be deemed to violate the independence requirements set forth in paragraph 56(f) of the Commission's Order dated May 20, 2004 in the Prior Proceeding. Professor Gibbons' fees and expenses will be borne by Strong.

10. The Distribution Plan proposes that the requirement that a bond be posted pursuant to Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans may be waived by the Commission for good cause shown, namely that: (1) the Fund Administrator will have no custody or control of the Fair Fund, (2) the Fair Fund will be held by the BPD until immediately before transfer to PNC Bank, N.A. ("PNC") for eventual transfer to Eligible Recipients (defined below), (3) upon transfer from BPD, PNC will hold the Fair Fund in an escrow account, separate from the bank's other assets, until presentation of a check or electronic transfer by an Eligible Recipient, at which time funds will be transferred to a controlled distribution account, (4) presented checks or electronic transfers will be subject to "positive pay" controls before being honored by PNC, and (5) both BNY Mellon and PNC will maintain, throughout the distribution process, insurance and/or financial institution bonds that cover errors and omissions, misfeasance and fraud. Respondent has informed the Staff that:

- BNY Mellon maintains and will continue to maintain a financial institutions bond with an aggregate limit of \$150 million. The primary insurer is Lloyds of London, a company which, at its most recent renewal, was rated A (Stable) by A.M. Best. BNY Mellon's bond provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment, or deliver of funds as a result of fraudulent input, preparation or modification of computer instructions, data, or fraudulent electronic transmissions or communications.

- BNY Mellon maintains and will continue to maintain directors and officers liability insurance in the amount of \$120 million. This insurance protects against errors and omissions committed by directors, officers and employees during the life of the policy.
- BNY Mellon also maintains a professional liability policy with an aggregate limit of \$75 million. The primary insurer is Houston Casualty Company, a company which, as of its most recent renewal, was rated A+ (Superior) by A.M. Best. This insurance covers unintentional errors and omissions.
- PNC maintains and will continue to maintain a financial institutions bond including errors and omissions coverage with an aggregate limit of \$150 million. The primary insurer is Houston Casualty Company. PNC's bond provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment, or deliver of funds as a result of fraudulent input, preparation or modification of computer instructions, data, or fraudulent electronic transmissions or communications.
- PNC maintains and will continue to maintain directors and officers liability insurance in the amount of \$300 million. This insurance protects against errors and omissions committed by directors, officers and employees during the life of the policy.

11. Additional information about PNC's and BNY Mellon's insurance coverage has been provided to the Staff separately for review and has been deemed "not unacceptable."

12. The Commission has appointed Damasco and Associates as the Tax Administrator ("Tax Administrator") of the Fair Fund. Strong and the Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall have the limited power and authority to (1) act as the administrator for tax purposes for the Fair Fund as a

QSF; (2) prepare, sign, and file the necessary tax returns and tax-related documents for the Fair Fund; (3) obtain the necessary tax-related documents and identifiers, such as an employee identification number, on behalf of the Fair Fund; (4) perform other tax-related and reporting duties on behalf of the Fair Fund as required by Department of the Treasury regulations relating to QSF administrators; and (5) communicate on behalf of the Fair Fund on matters set forth in this paragraph.<sup>4</sup> The Tax Administrator will perform the Fair Fund's tax reporting in accordance with the requirements of 26 U.S.C. § 468B(g). The Tax Administrator's fees and expenses will be borne by Strong.

**B. Control of the Fair Fund.**

13. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund is currently deposited at the BPD. Upon final approval of the Distribution Plan, the Fund Administrator, with the assistance of BNY Mellon, shall establish an account at PNC Bank, in the name of and bearing the Taxpayer Identification Number of the QSF ("QSF Account"). Following approval of the Distribution Plan, and submission by the Fund Administrator of a validated list of payees and amounts to the Staff and all information necessary to make disbursement to each distributee, and unless otherwise directed by the Commission, the Staff shall cause the balance in the Fair Fund to be deposited in the QSF Account at PNC Bank. The Fund Administrator shall be the signer on the QSF Account, subject to the continuing jurisdiction and control of the Commission. The Fund Administrator, with the assistance

---

<sup>4</sup> Order Directing Appointment of Tax Administrator, Release No. 34-54639 (Oct. 23, 2006); Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Release No. 34-53279A (Feb. 14, 2006).

of BNY Mellon, shall authorize PNC Bank to provide account information to the Tax Administrator. The Fund Administrator, with the assistance of BNY Mellon, shall use the assets and earnings of the Fair Fund to make payments pursuant to this Distribution Plan and to provide the Tax Administrator with assets to pay tax liabilities. The QSF Account shall be invested in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government, of a type and term necessary to meet the cash requirements of the payments to investors, tax obligations, and fees; provided, however, that investments in U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

14. Other than interest earned, it is not anticipated that the Fair Fund will receive additional funds. In the event that the Fair Fund receives additional funds, such funds shall be dealt with as received, in a manner acceptable to the Fund Administrator, Strong, and the Staff.

### **III. Distribution Plan and Procedures.**

#### **A. Shareholder Database and Shareholder Allocation.**

15. The Fund Administrator, with the assistance of BNY Mellon, which previously provided Strong's transfer agent recordkeeping system, will use that recordkeeping system to develop the shareholder database to be used for distribution purposes (the "Shareholder Database"). The Shareholder Database will include all direct retail shareholders, transparent intermediary accounts, and omnibus accounts (essentially, all of the shareholder information available directly to Strong) that held shares in the HYMBF on December 31, 2002, December 31, 2003, and June 30, 2004. For each of these dates, the applicable percentage of the Settlement Amount, plus the same

percentage of interest earned on the Fair Fund through the date of approval of the Distribution Plan by the Commission (subject to any tax liabilities of the Fair Fund), will be allocated pro rata to all shareholders of record as of that date. Each shareholder's pro rata allocation for each of the three applicable dates will be added together to determine the total amount of the distribution that will be paid to each shareholder (the "Shareholder Allocation").

**B. De Minimis Amounts.**

16. Due to the time and expense involved in making distributions to large groups of people, a *de minimis* threshold is typically set in large distributions to avoid the inefficiencies resulting from making distributions of extremely small amounts. Consistent with other Fair Fund distributions, the *de minimis* amount per shareholder will be \$10.00. Thus, each shareholder whose Shareholder Allocation is \$10 or more will receive a distribution (the "Eligible Recipients"). The total of all Shareholder Allocations below the \$10 *de minimis* threshold will constitute a gross-up residual. This gross-up residual amount will then be re-allocated among shareholders whose Shareholder Allocation is under \$10 in an attempt to make as many of these shareholders as possible Eligible Recipients. Beginning with shareholders whose Shareholder Allocation is just under \$10, this residual will be re-allocated in sequence to bring additional shareholders to a Shareholder Allocation of \$10, thus making them Eligible Recipients, continuing until the gross-up residual is exhausted.

**C. Validation and Approval of Disbursing the Distribution Funds.**

17. In order to distribute funds, the Fund Administrator will, after approval of the Distribution Plan, submit a validated list of payees and the payment amounts to the

assigned Staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). The payees and amounts will be validated by the Fund Administrator, with the assistance of BNY Mellon. The validation will state that the list was compiled in accordance with the Distribution Plan and provides all information necessary to make disbursement to each Eligible Recipient. Unless otherwise directed by the Commission, the Staff will obtain an Order Directing Disbursement that releases funds to the QSF Account based upon the validated list and a representation by the Fund Administrator that the checks will be issued within five business days of the receipt of funds in the QSF Account from the BPD, except as necessary to complete the outreach process for omnibus and other intermediary accounts as described in paragraphs 20-24 below.

**D. Shareholder Location and Distribution of Checks.**

18. The Fund Administrator, with the assistance of BNY Mellon, will run the names and addresses of all Eligible Recipients through the National Change of Address Database to ensure as much accuracy as possible in locating Eligible Recipients. After any changed addresses have been updated in the Shareholder Database, the Fund Administrator, with the assistance of BNY Mellon, will begin compiling and sending a distribution check to each Eligible Recipient (“Check Distributions”). The Check Distributions will include a check for the distribution amount and a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the available information regarding tax reporting and other related tax matters; (c) a

statement that checks will be void after 90 days from the initial mailing;<sup>5</sup> and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the assigned Staff for review and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a Commission Fair Fund.

19. Checks that are not negotiated within 90 days shall be voided and PNC Bank will be instructed to stop payment on those checks. It is anticipated that, in spite of efforts to verify Eligible Recipients and their current addresses, a certain number of checks will be returned. At that point, the Fund Administrator, with the assistance of BNY Mellon, will do further research to determine the current addresses for the Eligible Recipients. If correct addresses are located, they will be re-mailed to the correct address. Once steps to locate an Eligible Recipient deemed commercially reasonable in the judgment of the Fund Administrator have been exhausted without success, the check for that Eligible Recipient will be voided, and the amount will be added to the undistributed funds to be allocated as discussed in paragraph 33 below. In the case of a deceased Eligible Recipient, the Fund Administrator, with the assistance of BNY Mellon, will also void and re-issue checks to the deceased Eligible Recipient's successors-in-interest.

**E. Support Services for Shareholders.**

20. The Fund Administrator, with the assistance of BNY Mellon, will provide customer support and communications programs that will become active at least by the

---

<sup>5</sup> Replacement checks may be void after time periods other than 90 days; each replacement check will bear a statement with the date on which that check will be void.

time the first distribution occurs. These services will include a toll free number: (866) 201-0268. Recipients of a distribution may raise disputes through the customer support services. The disputes will be limited to claims that the shareholder received an incorrect amount in the distribution, or was incorrectly excluded from the distribution because the terms of the Distribution Plan were incorrectly applied to that shareholder. Customer support services will refer any such shareholder disputes to the Fund Administrator for his resolution, which shall be final. The Fund Administrator will not consider types of disputes other than those identified in this paragraph.

**F. Omnibus Accounts.**

21. Unlike direct retail accounts, where the ultimate shareholder was a single person or entity whose identity is known to Strong, many intermediaries, such as outside broker-dealers, aggregated the holdings and trades of their customers into a single account held at Strong. With respect to these accounts (the “Omnibus Accounts”), Strong knows the identity and location of the intermediary, as well as the account information for that intermediary, but lacks access to the identities, locations, and account information for the intermediaries’ customers, the ultimate shareholders of the HYMBF (the “Ultimate Shareholders”). The information necessary to complete distributions to any affected Ultimate Shareholders of the Omnibus Accounts remains with the intermediary who held the Omnibus Account (the “Omnibus Accountholder”).

22. For any Omnibus Account whose Shareholder Allocation is \$1,000 or greater, the Fund Administrator, with the assistance of BNY Mellon, will send the Omnibus Accountholder a letter no later than 10 (ten) business days after final approval of the Distribution Plan explaining that the Omnibus Accountholder is eligible to receive

a distribution from the Fair Fund, and that the Shareholder Allocation has been determined to be \$1,000 or more. As necessary, the Fund Administrator, with the assistance of BNY Mellon, will follow up with phone calls to the Omnibus Accountholder. The Fund Administrator, with the assistance of BNY Mellon, will maintain records of efforts to contact each Omnibus Accountholder. The Fund Administrator will provide the Omnibus Accountholder with two options, as set forth below, from which the Omnibus Accountholder has 90 days to choose:

- (i) the Omnibus Accountholder may choose to provide the data necessary to calculate the Shareholder Allocation at the Ultimate Shareholder level. If the Omnibus Accountholder chooses this option, then distributions to the Ultimate Shareholders of that Omnibus Account will be made by the Fund Administrator, with the assistance of BNY Mellon. Strong will reimburse the Omnibus Accountholder for its reasonable expenses in providing this information to the Fund Administrator, “reasonable” to be determined in the discretion of the Fund Administrator, provided that in no case will Strong pay more than the amount of the Shareholder Allocation to that Omnibus Accountholder to reimburse these expenses. The Fund Administrator shall maintain in confidence shareholder identifying information and any other information relating to sub-acountholders obtained from any Omnibus Accountholder pursuant to this Distribution Plan, and shall not share such information with Strong; the Fund Administrator, however, may share such information with its service providers or other parties to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other parties maintain such information in confidence; or
- (ii) the Omnibus Accountholder may choose not to provide the data necessary for the Fund Administrator to make distributions to the Ultimate Shareholders. If the Omnibus Accountholder chooses not to provide the data (or fails to provide this data within 90 days), then the Fund Administrator will proceed as follows: the Fund Administrator will ask the Omnibus Accountholder to certify that it will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to make the distribution to the Ultimate Shareholders in accordance with the allocation formula set forth in paragraph 7 above and the deadlines set forth in the Distribution Plan, and that the Omnibus Accountholder will return any undistributed money to an account that has

been established to hold otherwise undistributed funds for ultimate disposition in accordance with the Distribution Plan. The Fund Administrator will make commercially reasonable efforts to obtain a certification for each such Omnibus Accountholder. At the time the HYMBF distribution is made, each Omnibus Accountholder that provides the certification will receive its portion of the Fair Fund so that it can make the distribution to its Ultimate Shareholders. After the Omnibus Accountholder has distributed the funds in this fashion, the Omnibus Accountholder will be required to provide the Fund Administrator with a certification that it has complied with these terms and conditions. The Fund Administrator will maintain records of each attempt to contact an Omnibus Accountholder and each response received, if any. The records of those Omnibus Accountholders who do not provide a certification as required above will be given to Commission staff at least 45 days before the scheduled distribution is to be made. In such cases, the amount of Fair Fund allocated to such Omnibus Accountholder shall be treated as "undistributed" for purposes of the Distribution Plan, and processed pursuant to paragraph 33 below.

23. For any Omnibus Account whose Shareholder Allocation is under \$1,000, distribution will be made directly to the Omnibus Accountholder, who will be given the option of receiving from the Fund Administrator the distribution formula set forth in paragraph 7 above so that the Omnibus Accountholder can determine the Shareholder Allocation for each affected Ultimate Shareholder. The Omnibus Accountholder shall then apply any distribution technique that the Omnibus Accountholder, in its reasonable discretion, deems to be consistent with its fiduciary, contractual and legal obligations and shall report to the Fund Administrator how the distribution was effected. The Fund Administrator will ask the Omnibus Accountholder to certify that the Omnibus Accountholder will apply a distribution technique that the Omnibus Accountholder, in its reasonable discretion, has deemed to be consistent with its fiduciary, contractual and legal obligations and that the Omnibus Accountholder will return any undistributed money to an account that has been established to hold otherwise undistributed funds for

ultimate disposition in accordance with the Distribution Plan. The Fund Administrator will make commercially reasonable efforts to obtain a certification for each such Omnibus Accountholder. At the time the HYMBF distribution is made, each Omnibus Accountholder that provides the certification will receive its portion of the Fair Fund so that it can make the distribution to its Ultimate Shareholders. After the Omnibus Accountholder has distributed the funds in this fashion, the Omnibus Accountholder will be required to provide the Fund Administrator with a certification that it has complied with these terms and conditions. The Fund Administrator will maintain records of each attempt to contact an Omnibus Accountholder and each response received, if any. The records of those Omnibus Accountholders who do not provide a certification as required above will be given to Commission staff at least 45 days before the scheduled distribution is to be made. In such cases, the amount of Fair Fund allocated to such Omnibus Accountholder shall be treated as "undistributed" for purposes of the Distribution Plan, and processed pursuant to paragraph 33 below.

24. The Fund Administrator will notify the Commission Staff of any Omnibus Accountholder that refuses to accept a distribution payment, and any payments that are refused shall be added to the undistributed funds for ultimate transfer to the U.S. Treasury.

25. Rather than maintaining Omnibus Accounts, some intermediaries maintained individual accounts for each Ultimate Shareholder. In some cases, the identities of these Ultimate Shareholders are known to Strong. In others, Strong has access only to some kind of shareholder identification number, and all identification and contact information for the Ultimate Shareholder is held by the intermediary. In the case

of accounts where the Shareholder Allocation can be calculated for each Ultimate Shareholder, but Strong lacks identification information sufficient to complete the distribution, the Fund Administrator, with the assistance of BNY Mellon, will contact the intermediary of the account and provide two options, from which the intermediary has 90 days to choose.

- (i) If the intermediary chooses to provide identification information sufficient to complete the distribution for each Ultimate Shareholder who is an Eligible Recipient to the Fund Administrator, then Check Distributions will be sent directly to these Ultimate Shareholders from the Fund Administrator. The Fund Administrator shall maintain in confidence shareholder identifying information and any other information relating to sub-account holders obtained from any Intermediary pursuant to this Distribution Plan, and shall not share such information with Strong; the Fund Administrator, however, may share such information with its service providers or other parties to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other parties maintain such information in confidence, or;
- (ii) If the intermediary chooses not to provide this information, or fails to provide it within 90 days, then the Fund Administrator will proceed as follows: the Fund Administrator will ask the intermediary to certify that it will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to make the distribution to the Ultimate Shareholders in accordance with the allocation formula set forth in paragraph 7 above and the deadlines set forth in the Distribution Plan, and that the intermediary will return any undistributed money to an account that has been established to hold otherwise undistributed funds for ultimate disposition in accordance with the Distribution Plan. The Fund Administrator will make commercially reasonable efforts to obtain a certification for each such intermediary. At the time the HYMBF distribution is made, each intermediary that provides the certification will receive its portion of the Fair Fund so that it can make the distribution to its Ultimate Shareholders. After the intermediary has distributed the funds in this fashion, the intermediary will be required to provide the Fund Administrator with a certification that it has complied with these terms and conditions. The Fund Administrator will maintain records of each attempt to contact an intermediary and each response received, if any. The records of those intermediaries who do not provide a certification as required above will be given to Commission staff at least 45 days before

the scheduled distribution is to be made. In such cases, the amount of Fair Fund allocated to such intermediary shall be treated as "undistributed" for purposes of the Distribution Plan, and processed pursuant to paragraph 33 below.

**G. Retirement Plans and Qualified Tuition Plans.**

26. "Retirement Plan" as used in this Distribution Plan means an employee benefit plan, as such plans are defined in section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), which is not an Individual Retirement Account ("IRA"), whether or not the plan is subject to Title 1 of ERISA. Under this Distribution Plan, IRAs are treated like any other account, whether held directly through Strong or through an intermediary, and distributions to IRAs will be made in accordance with the procedures discussed above.

27. Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. The Distribution Plan shall require the intermediaries of retirement plans ("Retirement Plan Intermediaries")<sup>6</sup> to distribute the monies received in accordance with their fiduciary, contractual and legal obligations, consistent with guidance issued by the Department of Labor in Field Assistance Bulletin No. 2006-01 (available at [http://www.dol.gov/ebsa/regs/fab\\_2006-1.html](http://www.dol.gov/ebsa/regs/fab_2006-1.html)).

28. An intermediary to one or more Retirement Plans which was an Omnibus Accountholder shall determine the Shareholder Allocation for eligible Retirement Plans according to the procedures set forth in paragraphs 20-24 above, provided, however, that

---

<sup>6</sup> "Retirement Plan Intermediaries" for purposes of the Distribution Plan includes plan trustees, plan recordkeepers, plan administrators, and plan sponsors, in addition to other third-party intermediaries as described in DOL Field Assistance Bulletin No. 2006-01.

for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the Ultimate Shareholder.

29. Retirement Plan Intermediaries receiving a distribution may distribute it pursuant to one of the following alternatives:

- (i) Retirement Plan Intermediaries may allocate the distribution to each affected participant (or former participant) in a given retirement plan by using the allocation formulas necessary to determine the Shareholder Allocation referenced above. The Fund Administrator will make the allocation formulas available to Retirement Plan Intermediaries;
- (ii) Allocate the distribution among current participants on a per capita basis (whether or not they are current employees);
- (iii) Allocate the distribution among current participants on a pro rata basis based on current balances (whether or not they are current employees);
- (iv) To the extent that none of the preceding alternatives is administratively feasible because the costs of effectuating the allocation exceed the amount of the distribution, Retirement Plan Intermediaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan otherwise payable by participants (the distribution amount should not be used to offset expenses otherwise payable by the employer).

30. If the Retirement Plan Intermediary to whom the distribution payment is made, including the plan trustee, plan administrator, or plan recordkeeper, is no longer affiliated with the retirement plan which is the intended beneficiary of the distribution, it may transfer any distribution payment it receives to its successor, including by endorsement of the distribution check, provided that it sends the entire Distribution Mailing to its successor and provided that any such methodology used by the successor to distribute the payments is consistent with this Distribution Plan and any fiduciary, contractual, and legal obligations. If the successor Retirement Plan Intermediary is unknown, the former Retirement Plan Intermediary may send the Distribution Mailing

and check to the plan sponsor. Alternatively, the former Retirement Plan Intermediary may return the check to the Fund Administrator with the identity and address, if known, of the successor Retirement Plan Intermediary or plan sponsor so the Fund Administrator may reissue the check to the proper recipient.<sup>7</sup>

31. Similar complexities are involved in making distributions to participants of state-sponsored qualified tuition plans (“529 Plans”). Because of these complexities, 529 Plan sponsors may wish to consider alternate allocation and distribution methodologies, provided that any such methodology used is consistent with the Distribution Plan and their fiduciary, contractual and legal obligations. Possible alternative methodologies include, but are not limited to:

- (i) Allocate the distribution among current participants on a per capita basis;
- (ii) Allocate the distribution among current participants on a pro rata basis based on current balances.

32. In lieu of directly allocating to plan participants (because the amounts allocable to participants would be too small), use the distribution amount to offset plan expenses, such as audit fees, provided that the distribution amount should only be used to offset expenses otherwise payable by participants (the distribution amount should not be used to offset expenses otherwise paid by the plan manager).

#### **H. Termination of Fair Fund.**

33. Upon distribution of the funds, the Fund Administrator shall make arrangement for the final payment of taxes and shall submit a final accounting to the

---

<sup>7</sup> In cases where Strong Retirement Plans Services (“RPS”), a former subsidiary of Strong, was the former recordkeeper for plans who are Eligible Recipients, the Fund Administrator will issue the initial checks and send the Distribution Mailings for such plans to RPS’s successor, if known, or to the plan sponsor.

Commission. The Fair Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting by the Fund Administrator has been submitted and approved by the Commission, (2) all taxes have been paid, and (3) all remaining funds and/or any residual have been transferred to the Commission for transfer to the U.S. Treasury. Staff shall seek an order from the Commission to (1) approve the final accounting; (2) approve sending the remaining residual amount to the U.S. Treasury after the final tax payment has been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the staff assigned to this matter that all funds have been expended, to terminate the Fair Fund and discharge the Fund Administrator.

**I. Disposition of Funds Not Otherwise Distributed.**

34. It is unlikely that the entire Fair Fund will be distributed pursuant to the Distribution Plan. Reasons for this include the inability to locate certain Eligible Recipients despite reasonable steps taken, uncashed checks sent to Eligible Recipients, and Eligible Recipients who refuse distribution. Upon termination as defined in paragraph 33 above, all undistributed assets will be returned to the Commission for transfer to the U.S. Treasury.

**J. Accountings.**

35. The Fund Administrator, with the assistance of BNY Mellon, will file an accounting in the Commission's standard accounting format during the first ten days of each calendar quarter after the funds have been transferred from the BPD to PNC Bank, and will submit a final accounting for approval by the Commission prior to termination of the Fair Fund and the discharge of the Fund Administrator.

**K. Limitation of Liability.**

36. The Fund Administrator, and/or each of its designees, agents and assigns, including without limitation BNY Mellon, shall be entitled to rely on any Orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any Eligible Recipient or other former shareholder of the HYMBF for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Distribution Plan. This paragraph is an expression of the current state of the law and is not intended, nor should it be deemed to be, a representation to or an indemnification of the Fund Administrator, or its designees, agents and assigns, nor should this paragraph preclude the Commission or the QSF from seeking redress for any act or omission in the course of administering the Fair Fund or from seeking redress from any insurance or bond provided as set forth in this Distribution Plan in accordance with the rules and regulations of the Commission.

**IV. Notice of Proposed Distribution Plan.**

37. Pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans, notice of this proposed Distribution Plan shall be published in the SEC Docket, on the SEC website ([www.sec.gov](http://www.sec.gov)), and in other such publications as the Commission may require. The Notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission within 30 days of the publication date of the Notice. Comments may be submitted: 1. to the Office of the Secretary, United

States Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090; 2. by using the Commission's internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or 3. by sending an e-mail to rule-comments@sec.gov. All comments on the proposed Distribution Plan should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12448) in the subject line. Comments received will be publicly available, so persons should only submit information that they wish to make publicly available.

38. The Distribution Plan is not a claims-based plan, so procedures for providing notice and for making and approving claims are not applicable.

39. The distribution shall be accomplished as soon as is practicable following the Commission's final approval of the Distribution Plan.

#### **V. Changes/Amendments to Distribution Plan.**

40. It is possible that once the distribution process begins, changes or additions will need to be made to the Distribution Plan to resolve issues that are currently unanticipated.

41. The Fund Administrator shall take all reasonable and appropriate steps to distribute the Fair Fund according to the Distribution Plan. The Fund Administrator has discretion to make non-material changes affecting the methodology and the amounts allocated by the Distribution Plan, provided that the Fund Administrator has consulted with the Staff in advance of making such changes and such changes are not unacceptable to the Staff. If the Staff, in consultation with the Fund Administrator, determines that a change is material, then Commission approval in the form of an amendment to the Distribution Plan is required prior to implementation of the change. The Distribution

Plan may be amended upon the motion of any party, the Fund Administrator, or upon the Commission's own motion.

Submitted by Strong Capital Management,  
Inc.

Bruce E. Clark  
Aisling O'Shea  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004

Counsel for Strong Capital Management, Inc.