

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4199 / September 21, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31832 / September 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16823

In the Matter of

**FIRST EAGLE INVESTMENT
MANAGEMENT, LLC**

and

FEF DISTRIBUTORS, LLC,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940 AND SECTIONS 9(b) AND 9(f)
OF THE INVESTMENT COMPANY ACT OF
1940, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against First Eagle Investment Management, LLC and FEF Distributors, LLC (together, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these

proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds¹ that:

SUMMARY

These proceedings arise from the improper use of approximately \$25 million in mutual fund assets to pay for the distribution and marketing of fund shares outside of a written, approved Rule 12b-1 plan. Registered investment adviser First Eagle Investment Management, LLC (“First Eagle”) and its wholly-owned broker-dealer subsidiary, FEF Distributors, LLC (“FEF”), caused the First Eagle Funds (the “Funds”) to make payments to two financial intermediaries for distribution-related services. The distribution payments were not paid pursuant to a written, approved Rule 12b-1 plan, and were not paid by First Eagle out of its own resources (e.g., as so-called “revenue sharing payments”). In addition, use of the Funds’ assets to pay for these distribution-related services rendered the Funds’ disclosures concerning payments for distribution-related services inaccurate.

RESPONDENTS

1. **First Eagle Investment Management, LLC (“First Eagle”)** is a Delaware limited liability company located in New York, New York. First Eagle has been registered with the Commission as an investment adviser since 1995 and serves as the adviser to the First Eagle Funds.

2. **FEF Distributors, LLC (“FEF”)** is a Delaware limited liability company located in New York, New York. FEF is a wholly-owned subsidiary of First Eagle and serves as the First Eagle Funds’ principal underwriter and distributor. FEF has been registered with the Commission as a broker-dealer since July 1999.

OTHER RELEVANT ENTITIES

3. **First Eagle Funds (the “Funds”)** is a Delaware statutory trust registered with the Commission as an open-end diversified investment company. During the relevant time period, the trust included as many as seven funds. The trust’s investment adviser is First Eagle and its principal underwriter is FEF.

¹ The findings herein are made pursuant to Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. **Intermediary One** is dually registered with the Commission as a broker-dealer and investment adviser. Intermediary One provided distribution, marketing, and sub-transfer agent (“sub-TA”) services to the Funds.

5. **Intermediary Two** is dually registered with the Commission as a broker-dealer and investment adviser. Intermediary Two provided distribution, marketing, and sub-TA services to the Funds.

FACTS

6. Prior to December 1999, First Eagle advised two mutual funds and directly distributed shares of those two funds through a predecessor to FEF. In December 1999, First Eagle acquired a family of funds from another adviser and sought to expand the distribution of its funds’ shares by having FEF enter into distribution relationships with various financial intermediaries. Among others, FEF entered into a new relationship with Intermediary One in June 2000. Later, FEF entered into a relationship with Intermediary Two. The contract at issue with Intermediary Two was not formally documented until December 2007, although Intermediary Two began receiving payments from the Funds in 2005.

7. Financial intermediaries often provide both distribution and shareholder services to mutual funds. As to distribution services, Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder make it unlawful to use fund assets to “engage[] directly or indirectly in financing any activity which is primarily intended to result in the sale of [fund] shares” outside of a written Rule 12b-1 plan approved by the fund’s board.² As a result, if there is no approved Rule 12b-1 plan that permits the fund’s adviser to use fund assets to pay for distribution, then fund assets cannot be used to pay for such distribution. The adviser, however, may pay for those distribution services out of its own resources.

8. In addition to providing distribution services, intermediaries often provide shareholder services that typically would otherwise be provided by the fund’s transfer agent. These services are commonly referred to as “sub-TA services” and are often paid out of the fund’s assets.

9. Despite the fact that one of FEF’s two agreements with Intermediary One and its agreement with Intermediary Two called for the provision of distribution and marketing services, First Eagle and FEF treated the agreements as being for sub-TA services, and caused the Funds to pay for those services outside of a Rule 12b-1 plan, with its attendant controls and board oversight, through March 2014. From January 1, 2008 through March 31, 2014, First Eagle and FEF caused approximately \$25 million of the Funds’ assets to be used to make payments to these intermediaries for distribution and marketing services outside of a Rule 12b-1 plan. These payments were in addition to payments made to Intermediary One and Intermediary Two pursuant to the Funds’ written Rule 12b-1 plans.

² A fund’s Rule 12b-1 plan must also be approved by a majority of its shareholders, if the plan is adopted after any public offering of the fund’s shares.

Intermediary One Agreements

10. In June 2000, FEF entered into two agreements with Intermediary One: a Financial Services Agreement and a Selected Dealer Agreement. Prior to entering into the agreements, FEF consulted its outside counsel.

The Financial Services Agreement

11. Pursuant to the terms of the Financial Services Agreement, Intermediary One agreed to provide a variety of sub-TA services that are typically paid for out of fund assets, including the following: (i) maintaining separate records for each customer in the omnibus account for each fund; (ii) transmitting purchase and redemption orders to the Funds; (iii) preparing and transmitting account statements for each customer; (iv) transmitting proxy statements, periodic reports, and other communications to customers; (v) providing periodic reports to the Funds to enable each fund to comply with state Blue Sky requirements; and (vi) providing standard monthly contingent deferred sales charge reports.

12. In exchange for providing these services, Intermediary One charged per-account fees ranging between \$16-19. The Funds paid these fees.

The Selected Dealer Agreement

13. The Selected Dealer Agreement states in its opening paragraph that FEF “[has] invited [Intermediary One] to become a selected dealer *to distribute shares* of the [Funds].” (Emphasis added). The agreement describes the services to be provided under the contract, including “due diligence, legal review, training, [and] marketing,” as well as the following fees, which the agreement states are in addition to any Rule 12b-1 plan fees paid to Intermediary One by the Funds:

- (i) a one-time fee of \$50,000;
- (ii) 25 basis points of total new gross sales of shares of any class sold by Intermediary One, paid monthly; and
- (iii) 10 basis points of the value of fund shares sold by Intermediary One that are held for more than one year, payable quarterly (“for our continuing due diligence, training and marketing”).

14. First Eagle and FEF caused the Funds to pay total fees of approximately \$24.6 million to Intermediary One pursuant to the Selected Dealer Agreement, during the period January 1, 2008 through March 31, 2014. The services to be provided under the Selected Dealer Agreement were generally marketing and distribution, not sub-TA services. As a result, Respondents were prohibited from using the Funds’ assets to make payments to Intermediary One under this agreement, unless such payments were made pursuant to the Funds’ written, approved Rule 12b-1 plan (which they were not).

Intermediary Two Agreement

15. FEF entered into a Correspondent Marketing Program Participation Agreement (“CMPPA”) with Intermediary Two, dated as of December 3, 2007. However, the Funds had been paying Intermediary Two for substantially the same services provided under the CMPPA since 2005. The CMPPA states that Intermediary Two will do the following: (i) provide email distribution lists of correspondent broker-dealers that have requested “sales and marketing concepts” from Intermediary Two; (ii) market the Funds on its internal website; (iii) invite the Funds to participate in special marketing promotions and offerings to correspondent broker-dealers; (iv) invite First Eagle to participate in Intermediary Two’s annual conference; (v) provide quarterly statements detailing which correspondent broker-dealers are selling the Funds; and (vi) waive all trading fees charged to correspondent broker-dealers relating to the Funds.

16. In exchange for providing these services, Intermediary Two charged an annual fee equal to 5 basis points of the net asset value of outstanding shares of the Funds sold by Intermediary Two, billed quarterly.

17. First Eagle and FEF caused the Funds to pay approximately \$290,000 to Intermediary Two pursuant to the CMPPA, during the period January 1, 2008 through March 31, 2014. As with Intermediary One’s Selected Dealer Agreement, because the services referenced under the CMPPA were generally marketing and distribution, not sub-TA services, Respondents were prohibited from using the Funds’ assets to make payments to Intermediary Two under the CMPPA, unless such payments were made pursuant to the Funds’ written, approved Rule 12b-1 plan (which they were not).

First Eagle’s Disclosures to the Funds’ Board of Trustees

18. First Eagle periodically consulted with its outside counsel and reported to the Funds’ board of trustees (the “board”) regarding payments for distribution and sub-TA services. In the board reports, the fees under the Selected Dealer Agreement and the CMPPA were inaccurately included as sub-TA fees. In 2008, First Eagle engaged outside counsel to review its practices with regard to payments for sub-TA services. First Eagle shared the results of that review – which indicated that all of the fees paid to Intermediary One and Intermediary Two under the Financial Services Agreement, Selected Dealer Agreement, and CMPPA were for sub-TA services – with the board.

Fund Disclosures Regarding Distribution Expenses

19. The Funds’ prospectus disclosure regarding distribution expenses stated that “FEF Distributors or its affiliates bear distribution expenses to the extent they are not covered by payments under the [Rule 12b-1] Plans.” However, in connection with the Selected Dealer Agreement and CMPPA, the Funds, and not FEF or its affiliates, bore the additional distribution and marketing expenses not covered by the Funds’ Rule 12b-1 plans.

VIOLATIONS

20. Section 206(2) of the Advisers Act makes it “unlawful for any investment adviser . . . directly or indirectly to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, First Eagle willfully violated Section 206(2) of the Advisers Act.³

21. Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder make it unlawful for any registered open-end investment management company to “engage[] directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company” unless such financing is made pursuant to a written plan that meets the requirements of Investment Company Act Rule 12b-1(b). As a result of the conduct described above, First Eagle and FEF caused the Funds to violate Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder.

22. Section 34(b) of the Investment Company Act makes it unlawful for any person “to make any untrue statement of a material fact in any registration statement . . . filed or transmitted pursuant to [the Investment Company Act]” or “to omit to state therein any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading.” As a result of the conduct described above, First Eagle willfully violated Section 34(b) of the Investment Company Act.

UNDERTAKINGS

Respondent FEF undertakes to complete the following actions:

23. Independent Compliance Consultant. Respondent FEF shall retain, within 30 days of the issuance of this Order, the services of an Independent Compliance Consultant (“Consultant”) not unacceptable to the staff of the Commission. The Consultant’s compensation and expenses shall be borne exclusively by FEF. FEF shall require the Consultant to conduct a comprehensive review of FEF’s supervisory, compliance, and other policies and procedures designed to prevent and detect the prohibited use of the Funds’ assets to engage, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Funds.

³ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

a. Respondent FEF shall provide to the Commission staff, within 30 days of retaining the Consultant, a copy of an engagement letter detailing the Consultant's responsibilities, which shall include the reviews described above in paragraph 23.

b. At the end of the review, which in no event shall be more than 180 days after the date of the entry of this Order, Respondent FEF shall require the Consultant to submit a report to FEF and the staff of the Commission ("Report"). The Report shall address the issues described above in paragraph 23, and shall include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Consultant's recommendations for changes in or improvements to FEF's policies and procedures, and a procedure for implementing the recommended changes in or improvements to those policies and procedures.

c. Respondent FEF shall adopt all recommendations contained in the Report; provided, however, that within 210 days after the entry of this Order, or within 30 days after delivery of the report to FEF (whichever date is later), FEF shall, in writing, advise the Consultant and the staff of the Commission of any recommendations that it considers unnecessary, unduly burdensome, impractical, or inappropriate. With respect to any such recommendation, FEF need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which FEF and the Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 30 days after FEF serves the advice described above. In the event that FEF and the Consultant are unable to agree on an alternative proposal, FEF and the Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, FEF and the Consultant are unable to agree on an alternative proposal, FEF will abide by the recommendations of the Consultant.

d. Within 90 days of Respondent FEF's adoption of all of the recommendations in the Consultant's Report, as determined pursuant to the procedures set forth herein, FEF shall certify in writing to the Consultant and the Commission staff that it has adopted and implemented all of the Consultant's recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Anthony Kelly, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549-5010, or such other address as the Commission's staff may provide.

e. Respondent FEF shall cooperate fully with the Consultant and shall provide the Consultant with access to files, books, records, and personnel as reasonably requested for the Consultant's review.

f. To ensure the independence of the Consultant, FEF: (i) shall not have the authority to terminate the Consultant or substitute another independent compliance consultant for the initial Consultant without the prior written approval of the Commission staff; and (ii) shall

compensate the Consultant and persons engaged to assist the consultant for services rendered pursuant to this Order at their reasonable and customary rates.

g. Respondent FEF shall require the Consultant to enter into an agreement that provides that for the period of the engagement and for a period of two years from completion of the existing engagement, the consultant shall not enter into any new employment, consultant, attorney-client, auditing, or other professional relationship with FEF, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his/her duties under this Order shall not, without prior written consent of the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with FEF, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the existing agreement.

24. Recordkeeping. Respondent FEF shall preserve for a period of not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of their compliance with the undertakings set forth above.

25. Deadlines. The staff of the Commission may extend any of the procedural dates set forth above for good cause shown. The procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

26. Certification of Compliance by Respondent FEF. Respondent FEF shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission's staff may make reasonable requests for further evidence of compliance, and FEF agrees to provide such evidence. The certification and supporting material shall be submitted to Anthony Kelly, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5010, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than 60 days from the date of the completion of the undertakings.

27. In determining whether to accept the Offer, the Commission has considered these undertakings.

RESPONDENTS' REMEDIAL EFFORTS

28. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. Respondents voluntarily provided information and produced documents to the staff. In addition, First Eagle immediately began to make payments under the Selected Dealer Agreement and CMPPA from its own revenues, ceased using the Funds' assets to make any portion of such payments, and offered to return the amount of money improperly paid from the Funds' assets.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. First Eagle cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act, Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder, and Section 34(b) of the Investment Company Act.

B. First Eagle is censured.

C. FEF cease and desist from causing any violations and any future violations of Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder.

D. Respondents First Eagle and FEF shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$39,747,879.75 as follows:

(i) Respondent First Eagle shall pay disgorgement of \$24,907,354.00 and prejudgment interest of \$2,340,525.75, consistent with the provisions of this Subsection D.

(ii) Respondents First Eagle and FEF shall jointly and severally pay a civil monetary penalty in the amount of \$12,500,000.00, consistent with the provisions of this Subsection D.

(iii) Within 10 days of the entry of this Order, Respondents shall deposit \$39,747,879.75 (the "Distribution Fund") into an escrow account acceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] or 31 U.S.C. § 3717.

(iv) Respondents shall be responsible for administering the Distribution Fund and may hire a professional to assist them in the administration of the distribution. Respondents shall pay from the Distribution Fund to each current and former shareholder account⁴ that held shares of the Funds at any time during the period January 1, 2008 through March 31, 2014 (the "Relevant Period") (collectively, the "affected shareholder accounts"), an amount representing the full amount of each affected shareholder account's proportion of fees paid by the Funds during the Relevant Period pursuant to the Selected Dealer Agreement and the CMPPA, foregone appreciation in the relevant Fund portfolio during the period shares were held, and reasonable interest at the Federal Short-Term rate from the date shares of the Funds were sold through the estimated date of the distribution, pursuant to a disbursement calculation (the "Calculation") that will be submitted to,

⁴ The majority of the Funds' shares were held in omnibus accounts, in which the intermediary is the shareholder of record, holding shares on behalf of clients who are the beneficial owners.

reviewed, and approved by the Commission staff in accordance with this Subsection D. Such calculation shall be subject to a *de minimis* threshold, as described in paragraph (v), below. No portion of the Distribution Fund shall be paid to any affected shareholder account in which Respondents First Eagle or FEF, or any of their officers or directors, has a financial interest.

(v) Respondents shall, within 180 days from the date of this Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum, (i) the name of each affected shareholder account, (ii) the exact amount of the payment to be made from the Distribution Fund to each affected shareholder account, and (iii) the amount of any *de minimis* threshold to be applied. Respondents also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondents' proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that Respondents are notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection D.

(vi) Respondents shall complete the disbursement of all amounts payable to affected shareholder accounts within 90 days of the date that the Commission staff approves the Calculation, unless such time period is extended as provided in Paragraph xi of this Subsection D.

(vii) If Respondents are unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected shareholder account or a beneficial owner in an affected shareholder account or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 after the final accounting provided for in Paragraph ix of this Subsection D is submitted to the Commission staff. Payment must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
3. Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying First Eagle Investment Management, LLC, and FEF Distributors, LLC as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anthony Kelly, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

(viii) Respondents shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Distribution Fund.

(ix) Within 45 days after Respondents complete the disbursement of all amounts payable to affected shareholder accounts, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondents have made payments from the Distribution Fund to affected shareholder accounts in accordance with the Calculation approved by the Commission staff. Respondents shall submit proof and supporting documentation of such payment (whether in the form of electronic payments or cancelled checks) in a form acceptable to the Commission staff under a cover letter that identifies First Eagle Investment Management, LLC and FEF Distributors, LLC as Respondents and the file number of these proceedings to Anthony Kelly, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-5010. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(x) After Respondents have submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any undistributed amount to the United States Treasury.

(xi) The Commission staff may extend any of the procedural dates set forth in this Subsection D for good cause shown. Deadlines for dates relating to the Distribution Fund shall

be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected shareholder accounts. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. Respondent FEF shall comply with the undertakings enumerated above in paragraphs 23 through 26 of this Order.

By the Commission.

Brent J. Fields
Secretary