

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

**ADMINISTRATIVE PROCEEDING
File No. 3-15429**

In the Matter of

**North East Capital, LLC
and Anthony T. Viciomine,**

Respondents.

PROPOSED AMENDED PLAN OF DISTRIBUTION

1. *Purpose and Background.* This Proposed Amended Plan of Distribution (the “Plan”) has been developed pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan proposes a distribution of the funds collected from North East Capital, LLC (“North East Capital”) and Anthony T. Viciomine (“Viciomine”) (collectively, “Respondents”) to investors in North East Capital Fund LP (“North East Fund”), a pooled investment vehicle founded and managed by Respondents.

On August 16, 2013, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”) against Respondents (Securities Act Rel. No. 9442 (Aug. 16, 2013)). The Order found that Viciomine was the founder and sole principal of North East Capital, an unregistered investment adviser and general partner of the North East Fund. The Order further found, among other things, that from November 2011 through March 2012, Viciomine misappropriated \$189,415 of the North East Fund’s assets in the form of unearned “incentive fees.”

The Order requires Respondents to cease and desist from committing or causing directly or indirectly any violations and any future violations of Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The Order bars Viciomine from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and prohibits Viciomine from serving or acting as an employee,

officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, with the right to apply for reentry after five years.

Respondents also were ordered to pay by August 21, 2013, jointly and severally, disgorgement of \$189,415, prejudgment interest of \$6,717, and a civil money penalty of \$150,000.

Respondents did not pay any money to the Commission by August 21, 2013 in accordance with the Order. On August 22, 2013, the Commission filed an application for enforcement of consent order in the United States District Court Eastern District of New York pursuant to Section 20(c) of the Securities Act of 1933, 15 U.S.C. §77t(c), and Section 21(e)(1) of the Securities Exchange Act of 1934 to enforce compliance of the Order. On September 17, 2013, the Commission obtained a default order for enforcement of its consent order, requiring Respondents to pay within 14 days of the default order, jointly and severally, disgorgement of \$189,415 with additional interest of \$457, prejudgment interest of \$6,717, and civil monetary penalty of \$150,000 and additional interest of \$193. The default order ordered that the Respondents pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. §§ 3001 – 3306.

Respondents ultimately paid a total of \$346,892 in disgorgement (\$189,415), prejudgment interest (\$6,717), additional interest (\$539), post judgment interest (\$221)¹, and civil monetary penalties (\$150,000) to the Commission. A total of \$340,869 is available for distribution, calculated as follows: \$346,671 in disgorgement, prejudgment interest, additional interest, and civil monetary penalties less a reserve of \$5,802 for taxes, fees or other expenses of administering the Amended Plan of Distribution. It is anticipated that there will be one disbursement to the eligible investors specified in paragraph 5 below.

The Order created a Fair Fund pursuant Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds paid by the Respondents (the “Fair Fund”). The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit in a Commission designated interest-bearing account at the United States Department of Treasury (“U.S. Treasury”). The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

Under the Plan, the Fair Fund, less any reserve for taxes, fees or other expenses of administering the Plan (the “Net Fair Fund”), will be distributed to Eligible Investors as set forth in paragraph 5 below. The Net Fair Fund is \$340,869.

2. *Fund Administrator.* Nancy Chase Burton, Supervisory Assistant Chief Litigation Counsel in the Commission’s Division of Enforcement’s Office of Distributions, is proposed to be the administrator of the Fair Fund (the “Fund Administrator”). As a Commission employee, the Fund Administrator receives no compensation from the Fair Fund for her services in administering the Fair Fund. In accordance with Rule 1105(c), 17 C.F.R. § 201.1105(c), no bond

¹ Respondents paid post judgment interest of \$220.61 to the Commission. The post judgment interest is not part of the Fair Fund and is to be sent to the US Treasury.

is required since the Fund Administrator is a Commission employee. In carrying out her duties, the Fund Administrator may be assisted by other Commission staff acting under her supervision.

The Fund Administrator will, among other things: oversee the administration of the Fair Fund, obtain mailing information for the Eligible Investors as defined in paragraph 5 below, distribute money from the assets of the Fair Fund in accordance with the Plan, resolve disputes, prepare a final accounting with assistance from the tax administrator, and provide the tax administrator with funds to pay tax liabilities and tax compliance fees and costs, pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds (Exchange Act Rel. No. 68683 (Jan. 17, 2013)).

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

4. *Tax Administrator.* The Commission has appointed Damasco and Associates, LLP as the Tax Administrator (“Tax Administrator”) of the Fair Fund (Exchange Act Rel. No. 72419 (June 18, 2014)). The Fund Administrator will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance and any other work ordered to the Tax Administrator by the Commission. The Tax Administrator will be compensated for all reasonable costs and expenses from the Fair Fund in accordance with its 2013-2015 Engagement Letter Agreement with the Commission. The Fair Fund’s taxes will be paid out of the Fair Fund.

5. *Specification of Eligible Investors.* Except as noted below, eligible investors are persons who invested in the North East Fund, as determined by Commission staff from the records of Respondents obtained during the investigation of the matter, and who suffered a net loss amount, as described in paragraph 7 of this Plan (“Eligible Investors”). Investors ineligible to participate in this Plan are those investors in the North East Fund who provided funds to Respondents for the purpose of satisfying, in whole or in part, the Order entered against Respondents.

6. *No claims-made process.* The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

7. *Methodology for Determining Distribution Amounts.* The Commission staff determined the amount to be distributed to each Eligible Investor as follows.

a. The staff totaled the actual principal invested for each Eligible Investor in the North East Fund;

b. The staff then subtracted from this total amount all actual payments an Eligible Investor received from the North East Fund including redemptions, withdrawals,

and any other payments. This resulting total is an Eligible Investor's net loss amount ("Net Loss Amount");

c. The staff next added the Net Loss Amounts for each Eligible Investor and compared this amount to the approximate Net Fair Fund;

d. Because the total Net Loss Amounts exceeded the Net Fair Fund, the staff determined what percentage of the total Net Loss Amounts was represented by each Eligible Investor's Net Loss Amount. The resulting percentage for each Eligible Investor is the investor's pro rata share ("Pro Rata Share");

e. The Net Fair Fund was multiplied by each Eligible Investor's Pro Rata Share to determine an estimated pre-deduction net distribution amount ("Estimated Pre-Deduction Net Distribution Amount") for each Eligible Investor;

f. The staff then totaled disbursements (if any) each Eligible Investor received from the Respondents while the Respondents suspended redemptions from the North East Fund, from June 4, 2012 through April 1, 2013 ("Post Suspension Disbursements"). The total amount of each Eligible Investor's Post Suspension Disbursements (if any) was subtracted from the Eligible Investor's Estimated Pre-Deduction Net Distribution Amounts and redistributed to those Eligible Investors who had not received a Post Suspension Disbursement Amount, as described in "g" below;

g. Next, to determine the appropriate percentage of the total Post Suspension Disbursements that should be distributed to each Eligible Investor that had not received a Post Suspension Disbursement, the staff determined each Eligible Investor's percentage of the total Net Loss Amounts, excluding those Eligible Investors that had received Post Suspension Disbursements. The resulting percentage is each Eligible Investor's pro rata share of the Post Suspension Disbursements ("Pro Rata Share of the Post Suspension Disbursements"). The staff then multiplied the total Post Suspension Disbursements by each investor's Pro Rata Share of the Post Suspension Disbursements to determine an estimated distributed Post Suspension Disbursement amount for each Eligible Investor ("Estimated Distributed Post Suspension Disbursement Amount");

h. Finally, the each Eligible Investor's Estimated Distributed Post Suspension Disbursement Amount was added to the Eligible Investor's Estimated Pre-Deduction Net Distribution Amount to determine an estimated net distribution amount ("Estimated Net Distribution Amount") for each Eligible Investor.

In the view of the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund to compensate an investor's harm. Based on this methodology, it is anticipated that there will be one distribution to Eligible Investors, which will take place as outlined in paragraph 9 below.

Based on this methodology, the individual Net Loss Amounts, percentages of pooled net loss for Eligible Investors, deductions for Post Suspension Distributions and Net Distribution Amounts are as follows:

Eligible Investor	Net Loss Amount	% of Pooled Net Loss of All Eligible Investors	Pre-Deduction Net Distribution Amount	Deductions for Post Suspension Distributions	% Share of Total Post Suspension Distributions	Net Distribution Amount
Eligible Investor #1	\$19,160	2.78%	\$9,474		3.21%	\$9,570
Eligible Investor #2	\$9,560	1.39%	\$4,727		1.60%	\$4,775
Eligible Investor #3	\$47,640	6.91%	\$23,555		7.98%	\$23,795
Eligible Investor #4	\$25,640	3.72%	\$12,678		4.30%	\$12,807
Eligible Investor #5	\$26,680	3.87%	\$13,192		4.47%	\$13,326
Eligible Investor #6	\$190,520	27.64%	\$94,202		31.93%	\$95,160
Eligible Investor #7	\$5,680	0.82%	\$2,808		0.95%	\$2,837
Eligible Investor #8	\$19,040	2.76%	\$9,414		3.19%	\$9,510
Eligible Investor #9	\$14,280	2.07%	\$7,061		2.39%	\$7,133
Eligible Investor #10	\$14,280	2.07%	\$7,061		2.39%	\$7,133
Eligible Investor #11	\$190,360	27.61%	\$94,123		31.90%	\$95,080
Eligible Investor #12	\$33,912	4.92%	\$16,768		5.68%	\$16,938
Eligible Investor #13	\$92,640	13.44%	\$45,806	\$3,000		\$42,806
TOTAL	\$689,392		\$340,869			\$340,869

8. *Procedures for Locating and Notifying Eligible Investors.* Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, Commission staff has identified thirteen (13) Eligible Investors . Within thirty (30) days of the Commission’s approval of the Plan, the Fund Administrator will send each Eligible Investor a notice by electronic mail, United States Postal Service, or other mail delivery service regarding the Commission’s approval of the Plan, including as appropriate, a statement characterizing the distribution, a link to the Plan on the Commission’s website and instructions for requesting a copy of the Plan, the number assigned that Eligible Investor on the chart in order to determine his or her Net Loss Amount and Estimated Net Distribution Amount, a description of the tax information reporting and other related tax matters, and the name of the Fund Administrator to contact with questions regarding the distribution (the “Plan Notice”). Eligible Investors will be asked to confirm the distribution payment or provide documentation if they disagree with the estimated Net Loss Amount. The Fund Administrator will coordinate with the Tax Administrator to request contact and other information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

If a Plan Notice is returned as undeliverable within sixty (60) days of approval of the Plan, the Fund Administrator will make all reasonable efforts to ascertain an Eligible Investor’s correct address. The Fund Administrator will then resend the Plan Notice to the Eligible

Investor's new address within thirty (30) days of receipt of the returned Plan Notice. If the Plan Notice is returned again, the Eligible Investor will be removed from the distribution and the allocated distribution amount will be added to the Net Fair Fund and become part of the recalculation described above in paragraph 7.

If an Eligible Investor fails to respond within sixty (60) days from approval of the Plan, the Fund Administrator will then make no fewer than two (2) attempts to contact the Eligible Investor telephonically or by email. The second attempt will to the extent possible take place no more than seventy-five days (75) days from approval of the Plan. If an Eligible Investor fails to respond to the Fund Administrator's contact attempts, such Eligible Investor will not receive a distribution and the amount that such Eligible Investor would have received will be included in the Net Fair Fund available to those Eligible Investors who responded to the Fund Administrator and the staff will recalculate the estimated Net Distribution Amount pursuant to paragraph 7 above as modified by the removal of such persons. In no event, however, will an Eligible Investor receive a distribution payment that exceeds the amount of his or her Net Loss Amount.

Any funds from the Net Fair Fund that cannot be distributed for any reason will become part of the residual described in paragraph 15 and reported in the final accounting.

9. *Distribution Timing.* The Fund Administrator will use her best efforts to start the Commission disbursement approval process within one hundred and fifty (150) days of the Plan's approval.

10. *Bureau of the Fiscal Service; Validation and Approval of Disbursement of the Fair Fund.* The Fair Fund disbursement to Eligible Investors will be implemented by the Commission and disbursed through the U.S. Treasury's Bureau of the Fiscal Service ("BFS"); checks will be mailed or distribution payments will be electronically transferred to each Eligible Investor as instructed by the Fund Administrator working with other Commission staff. The Fund Administrator will compile the information, prepare a payment file, and verify the payment file's completeness and accuracy for submission to Commission staff who will make the disbursements through BFS upon the issuance of an order to disburse pursuant to Rule 1101(b)(6).

The Fund Administrator will work with BFS to obtain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator also is responsible for accounting for all payments. Checks issued by BFS state on their face that they are valid for one year. If any checks issued are not cashed within the one year time period, the Fund Administrator will work with BFS to identify all uncashed checks.

11. *Accountings.* When all funds have been disbursed except for the residual described in paragraph 15 of the Plan, the Fund Administrator will submit a final accounting for the approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the U.S.

Treasury, and an SEC employee has been appointed as Fund Administrator, no interim accountings are required.

12. *Expenses of Administration.* Fees and other expenses of administering the Plan will be paid from the Fair Fund. The estimated expenses are \$5,802 for taxes, fees or other expenses of administering the Plan

13. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute funds from the Net Fair Fund according to the Plan. The Fund Administrator will inform Commission staff of any changes needed in the Plan. If a change is determined to be material, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. Immaterial changes may be made by the Fund Administrator with approval of Commission staff. For good cause shown, and in consultation with the Commission staff, the Fund Administrator may extend any of the procedural deadlines set forth in the Plan.

14. *Procedures to Request Plan Notice.* A person that does not receive a Plan Notice and believes that he or she should have received a Plan Notice after becoming aware of the Plan (e.g., through other Eligible Investors or on www.sec.gov) must submit documentation to the Fund Administrator to establish that the individual is in fact eligible to receive a Plan Notice within seventy-five (75) days after the Commission's approval of the Plan. The Fund Administrator will contact the individual within twenty-one (21) days of receiving the individual's documentation with a determination of his or her eligibility if the Fund Administrator determines that the individual should have received a Plan Notice.

15. *Disposition of Undistributed Funds and Residual.* A residual within the Fair Fund refers to any amounts remaining after distribution of the Net Fair Fund to Eligible Investors has occurred. After the distribution is completed, all funds remaining in the residual will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

The residual account will include as applicable funds reserved for future taxes and related expenses, funds from checks that have not been cashed, that were not delivered or that were returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties. The amount of all uncashed checks will be credited to the Fair Fund account and maybe distributed pro rata to other Eligible Investors who cashed their checks, so long as total payments to an Eligible Investor do not exceed their Net Loss Amount. Any funds that are not distributed and cashed will become part of the residual.

16. *Termination of the Fair Fund.* The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred: a) a final accounting, in a standard accounting format provided by Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; b) all taxes, final fees and expenses of the Tax Administrator, and all other post-distribution expenses have been paid by the Fair Fund; and c) any amount remaining in the Fair Fund has been received by

the Commission. When the Commission has approved the final accounting, the Commission staff will seek an order from the Commission to approve the termination of the Fair Fund, the discharge of the Fund Administrator, and the transfer of any amount remaining in the Fair Fund to the United States Treasury.

17. *Notice of Proposed Plan and Opportunity for Comment.* The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the “Notice”) will be published in the SEC Docket and on the Commission’s website at <http://www.sec.gov>. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the publication of the Notice: (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission’s Internet comment form (www.sec.gov/litigation/admin.shtml); or (3) by sending an email to rule-comments@sec.gov. Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File Number 3-15429” in the subject line. Comments received will be available to the public. Thus, persons should only submit information that they wish to make publicly available.