

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17315

In the Matter of

**ROSS, SINCLAIRE & ASSOCIATES,
LLC AND MURRAY SINCLAIRE, JR.,**

Respondents.

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PROPOSED PLAN OF DISTRIBUTION

I. OVERVIEW

1. The Division of Enforcement submits this proposed plan of distribution (the “Plan”) to the Commission pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for distribution of funds collected in the above-captioned matter to compensate investors harmed by the conduct that served as the basis for its findings of securities law violations in the Commission’s Order (the “Order”)¹ against Ross, Sinclair & Associates, LLC (“RSA”), a registered broker-dealer, and Murray Sinclair, Jr. (“Sinclair”), RSA's president and CEO (collectively, the “Respondents”).

II. BACKGROUND

2. According to the Order, from at least January 2007 through December 2012 (the “Relevant Period”), the Respondents allowed Nicholas L. Fry II (“Fry”), president of registered investment adviser Fry Hensley and Company (“FHC”), to take advantage of his close relationship

¹ Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) 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, Exchange Act Rel. No. 78147 (June 23, 2016).

with RSA to carry out a fraudulent scheme whereby Fry charged his advisory clients inflated markups, markdowns, and commissions (“inflated transaction charges”) through RSA.

3. The Order found that during the Relevant Period, RSA permitted Fry to be involved in effecting equity securities trades for FHC clients at RSA, despite knowing that Fry did not have the required license to do this work. The Respondents permitted Fry and FHC to directly benefit from the higher charges by paying Jane Fry, Fry’s spouse, half of the transaction charges that RSA collected on Fry’s equity trades, even though Jane Fry did essentially no work for RSA and was not generally involved in Fry’s equity trading for FHC’s clients. RSA also benefited by keeping the other half of the transaction charges.

4. As a result of the Respondents’ misconduct, the Order found that RSA violated Section 15(b)(7) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 15b7-1 thereunder and Sinclair willfully aided and abetted and caused RSA’s violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder.

5. In the Order, RSA was ordered to pay \$703,335.16 in disgorgement, \$99,239.54 in prejudgment interest, and a \$100,000.00 civil money penalty and Sinclair was ordered to pay a \$50,000.00 civil money penalty to the Commission. The Order provided that the payments were to be made over a period of one year within the entry of the Order.

6. The Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, so the civil money penalties, along with the disgorgement and prejudgment interest, could be distributed to those harmed by the Respondents’ conduct described in the Order (the “Fair Fund”). The Respondents have paid a total of \$952,574.70, the full ordered amount, into the Fair Fund for distribution to harmed investors.

7. Under this Plan, the Fair Fund, less any reserve for taxes, fees or other expenses of administering this Plan (the “Net Fair Fund”) will be available for distribution to Eligible Investors.

8. The Fair Fund is currently deposited in a Commission designated interest-bearing account at the United States Department of the Treasury’s Bureau of Fiscal Services (“BFS”), where it will be held until a disbursement occurs. All BFS fees will be paid from the Fair Fund. The current balance of the Net Fair Fund, as of March 6, 2018, is approximately \$959,156.13.

9. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. It is not anticipated that the Fair Fund will receive additional funds, other than accumulated interest and earnings from investments.

10. The Fair Fund is not being distributed according to a claims-made process because the Commission staff has reasonably concluded that it has all records necessary to calculate harm as described in the Plan of Allocation in Section V.H below. As a result, procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

11. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

III. DEFINED TERMS

12. “**Certification Form**” means the form that will be mailed to each Eligible Investor in order to confirm the Recognized Loss amount, confirm the name of the payee to which the Eligible Investor’s check will be issued, and the mailing address for distribution. The Certification Form will also collect each Eligible Investor’s Social Security or Tax Identification Number and any other information needed relating to the tax treatment of any distribution.

13. “**Days**” means calendar days, unless otherwise specified herein.

14. “**Dispute**” means a written objection by an Eligible Investor to the amount the Fund Administrator has calculated as the Eligible Investor’s Recognized Loss amount.

15. “**Distribution Payment**” is the *pro rata* amount of the Net Fair Fund to be paid to each Eligible Investor as calculated in accordance with the Plan of Allocation.

16. “**Eligible Investors**” are those injured investors, or the legal heirs or successors of the Eligible Investors, who will be eligible to participate in the distribution of the Net Fair Fund, subject to the conditions detailed in Section V, herein.

17. “**Fair Fund**” means the monies paid to the Commission by the Respondents in full satisfaction of the Order.

18. “**Fund Administrator**” refers to Analytics Consulting LLC (“Analytics”) (collectively, with all its employees, agents, consultants, and independent contractors), which has been appointed by the Commission to administer and distribute the Fair Fund in accordance with the terms of the Plan.

19. “**Net Fair Fund**” means the Fair Fund, plus any interest earned, less any amounts expended for investment fees, tax obligations, and fees and expenses of the Fund Administrator and the Tax Administrator in accordance with this Plan.

20. “**Person**” means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

21. “**Plan**” means the Plan in the form approved by the Commission.

22. “**Plan Approval Notification**” means a written notice from the Fund Administrator to each of the Eligible Investors regarding the Plan approval.

23. “**Plan of Allocation**” means the methodology by which a Distribution Payment is calculated. The Plan of Allocation is set forth in Section V.H.

24. “**Pro Rata Share**” means that if the sum of Recognized Losses for all Eligible Investors exceeds the Net Fair Fund, the Fund Administrator will calculate each Eligible Investor’s *Pro Rata* Share as the Eligible Investor’s Recognized Losses divided by the sum of Recognized Losses for all Eligible Investors.

25. “**Recognized Loss**” shall mean the sum of excess transaction charges paid by an Eligible Investor during the Relevant Period as set forth in Section V.H below.

26. “**Relevant Period**” shall mean January 1, 2007 through December 31, 2012, inclusive of both dates.

27. “**Tax Administrator**” refers to Miller Kaplan Arase LLP (“Miller Kaplan”), the firm appointed by the Commission to serve as the tax administrator of the Fair Fund.

IV. ADMINISTRATORS

A. Fund Administrator

28. In an order dated September 21, 2017, the Commission appointed Analytics as the Fund Administrator and set Analytics’ bond at \$952,574.70, as provided for by Rules 1105(a) and 1105(c) of the Commission’s Rules, 17 C.F.R. §§ 201.1105(a) and 201.1105(c).² Any costs or premiums associated with the bond will be paid by the Fair Fund.

29. The Fund Administrator will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Fund Administrator in furtherance of its duties). The Fund Administrator’s reasonable fees and expenses

² Exchange Act Rel. No. 81674 (Sept. 21, 2017).

associated with distributing the Fair Fund shall be paid from the Fair Fund after approval by the Commission pursuant to the Commission's Rules.

30. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, obtaining updated mailing information for Eligible Investors as necessary, preparing accountings, cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, and disbursing the Fair Fund in accordance with the Plan.

B. Tax Administrator

31. On July 13, 2017, Miller Kaplan was appointed as the Tax Administrator by the Commission to handle the tax obligations of the Fair Fund.³ The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission.⁴

V. ADMINISTRATION OF THE FAIR FUND

A. Specification of Eligible Investors

32. Eligible Investors are limited to only those persons who paid inflated transactions charges during the Relevant Period and also suffered a Recognized Loss as calculated pursuant to Section V.H of this Plan.

B. Procedures for Locating and Notifying Eligible Investor

33. On the basis of information obtained by the Commission staff and based on review and analysis of applicable records, the Fund Administrator will identify the Eligible Investors. Within ten (10) business days of the publication of the Notice of Proposed Plan and Opportunity for Comment (the "Plan Notice"), the Fund Administrator will send a copy of the Plan Notice to the

³ Order Appointing Tax Administrator, Exchange Act Rel. No. 81141 (July 13, 2017).

⁴ See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 81057 (June 30, 2017).

last known mailing address of each of the Eligible Investors. The Plan Notice will refer the Eligible Investors to the Fair Fund's website, which will have posted the Plan Notice, the Plan, and the Order Instituting Proceedings.

34. Within thirty (30) days of the Commission's approval of the Plan, the Fund Administrator will send each Eligible Investor a notice regarding the approval of the Plan ("Plan Approval Notification"). The Plan Approval Notification will include as appropriate (a) a statement characterizing the distribution; (b) a link to the approved Plan posted on the Fair Fund's website and instructions for requesting a copy of the Plan or downloading the Plan; (c) a Recognized Loss calculation with an explanation how a *pro rata* amount is calculated; (d) the Certification Form, along with the notice of the requirement and time period allotted for the return of the Certification Form; (e) instructions for submitting to the Fund Administrator any Dispute to the Recognized Loss amount; (f) a description of the tax information reporting and other related tax matters; (g) the procedure for the distribution as set forth in the Plan; and (h) the name and contact information for the Fund Administrator in case an Eligible Investor has questions regarding the distribution. The Fund Administrator will coordinate with the Tax Administrator to request information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

35. Following the entry by the Commission of its order approving this Plan, the Fund Administrator shall:

- (a) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund website, www.RossSinclairFairFund.Com, will make available a copy of the approved Plan, include a copy of the Plan Notice, and related materials in downloadable form, and such other information that the Fund Administrator

believes will be beneficial to Eligible Investors. The Commission staff retains the right to review and approve any material posted on the Fair Fund website.

- (b) Establish and maintain a toll-free telephone number, 886-996-3808, for Eligible Investors to call to speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund. The Fund Administrator will also establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Eligible Investors as well as on the Fair Fund website.
- (c) Information about the distribution will also be available on the Commission's website at <https://www.sec.gov/divisions/enforce/claims/ross-sinclair-associates.htm>.

C. Certification Requirement By Eligible Investors

36. In order to maintain classification as an Eligible Investor, the Certification Form must be signed by the Eligible Investor under penalty of perjury under the laws of the United States and returned to the Fund Administrator by the deadline stated in the Plan Approval Notification. The Certification Form must be executed by the Eligible Investor, unless the Fund Administrator accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Eligible Investor's behalf. Those authorized to act on behalf of Eligible Investors will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan. A request by a surviving beneficiary or alternate payee of a deceased Eligible Investor must be supported by proper documentation validating their identity and status as the lawful beneficiary of the Eligible Investor.

At a minimum, the surviving beneficiary must submit a copy of a death certificate to demonstrate the Eligible Investor is deceased. He or she is also required to provide additional documentation including but not limited to, beneficiary designation forms, Last Will and Testament, estate records, Letters Testamentary, letters of administration, evidence of probate and/or any other testamentary provisions of the deceased person to demonstrate their status as beneficiary. Certified copies are not required. The Fund Administrator, in consultation with the Commission staff, retains the discretion to determine whether proper documentation has been submitted.

37. The Fund Administrator will review all Certification Forms. Each Eligible Investor will have the burden of proof to establish their identity as an Eligible Investor. The Fund Administrator will have the right to request, and the Eligible Investor will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

D. Failure to Respond to Plan Approval Notification

38. If an Eligible Investor fails to respond within thirty (30) days from the date of the Plan Approval Notification, the Fund Administrator will make no fewer than two (2) attempts to contact the Eligible Investor by mail, telephone or email, if known to the Fund Administrator. If an Eligible Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may remove such Eligible Investor from the distribution and the allocated amount of the Distribution Payment will be added to the Net Fair Fund and distributed *pro rata* to the remaining Eligible Investors.

E. Undeliverable Mail

39. The Fund Administrator will forward any returned mail for which an updated address is provided or obtained. The Fund Administrator will attempt to locate any Eligible

Investors whose Plan Notice or Plan Approval Notification is returned by the United States Postal Service (“USPS”) as “undeliverable” and will document all such efforts. The Fund Administrator will utilize all means reasonably available to locate Eligible Investor and to obtain updated addresses in response to undeliverable notices. The Fund Administrator will then resend the Plan Notice or Plan Approval Notification to the Eligible Investor’s new address. If the Plan Notice is returned as undeliverable again, and the Fund Administrator, despite all reasonable efforts, is unable to find an Eligible Investor’s correct address, the Fund Administrator, after consultation with the Commission staff, may remove such Eligible Investor from the distribution and the allocated distribution amount may be distributed pursuant to the procedure set forth in Paragraph 62. In no event, however, will an Eligible Investor receive from the Fair Fund more than the Eligible Investor’s Recognized Loss. The Fund Administrator will make available, upon request by the Commission staff, a list of all Eligible Investors whose Plan Notices or Plan Approval Notifications have been returned as “undeliverable” due to incorrect addresses and for which the Fund Administrator has been unable to locate current addresses.

F. Procedures for Disputing Recognized Loss Amount

40. Disputes will be limited to the calculation of the Recognized Loss amounts to Eligible Investors. Within thirty (30) days of the date that the Plan Approval Notification is mailed to an Eligible Investor, the Eligible Investor must submit a written communication detailing any Dispute, along with any supporting documentation. The Fund Administrator will investigate the Dispute, and such investigation will include a review of the written Dispute, as well as any supporting documentation. Within thirty (30) days of receipt of the written Dispute, the Fund Administrator will notify the Eligible Investor of its resolution of the Dispute, which will be final. This procedure will be set forth in the Plan Approval Notification.

G. Provisions for Tax Administrator

41. The Fair Fund constitutes a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Timely requesting funds necessary for the timely payment of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Fair Fund.

42. The Fund Administrator shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act.

43. All taxes will be paid from the Fair Fund, subject to the review and approval of Commission staff.

H. Plan of Allocation

44. The Fund Administrator will determine the amount to be distributed to each Eligible Investor from the Net Fair Fund.

- (a) *Determination of Investor Eligibility:* For each equity transaction by an Eligible Investor during the Relevant Period, the Recognized Loss will be calculated as follows:
 - (1) The Fund Administrator will calculate the Recognized Loss for each transaction as the amount of transaction charges in excess of the \$50 minimum RSA charged for equity transactions.
 - (2) The Fund Administrator will sum the Recognized Losses on all such transactions for each Eligible Investor.
- (b) *Determination of an Eligible Investor's Pro Rata Share:* If the sum of Recognized Losses for all Eligible Investors exceeds the Net Fair Fund, the Net Fair Fund will be allocated to Eligible Investors on a *pro rata* basis. The Fund Administrator will calculate each Eligible Investor's *Pro Rata* Share as the Eligible Investor's Recognized Losses divided by the sum of Recognized Losses for all Eligible Investors.
- (c) *Determination of an Eligible Investor's Distribution Payment:* The Fund Administrator will multiply the Net Fair Fund by each Eligible Investor's *Pro Rata* Share to determine each Eligible Investor's Distribution Payment.
- (d) *De Minimis:* No Distribution Payment will be made to an otherwise Eligible Investor unless the amount to be paid equals or exceeds \$10.00.

I. Validation and Approval of the Payment File

45. In order to disburse the Fair Fund, the Fund Administrator will compile and submit a list of payees (including payee names, addresses, and Social Security or Tax Identification Numbers) and payment amounts (the "Payment File") to the Commission staff no later than one

hundred twenty (120) business days after the date of the Plan Approval Notification. The Payment File shall be accompanied by a reasonable assurances letter as to the completeness and accuracy of the Payment File.

46. Prior to distribution, the Fund Administrator shall establish a reserve to permit payment of the remaining expenses of the distribution, including anticipated tax obligations and the fees and expenses of the Tax Administrator and anticipated fees and expenses of the Fund Administrator.

47. Consistent with Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(6), the Commission staff will obtain an order from the Commission to disburse the Fair Fund. Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to an escrow account ("Escrow Account"), established pursuant to the procedures set forth in Paragraphs 49 to 53, below. The Fund Administrator shall then distribute the funds to Eligible Investors as provided for in the Plan.

48. The Fund Administrator may aggregate accounts held by a Person in the same legal capacity in determining Distribution Payments. Prior to disbursement of the Net Fair Fund, the Fund Administrator will establish account(s) described in the following paragraph at a United States commercial bank (the "Bank"), that is acceptable to the Commission staff.

J. Escrow

49. The Fund Administrator shall establish with the Bank an Escrow Account pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the Commission staff, in the name of and bearing the Employer Identification Number ("EIN") of the Qualified Settlement Fund as described above. The Fund Administrator shall also establish with the Bank a separate deposit account (e.g., controlled distribution account, managed distribution account, linked

checking account or investment account) (“Deposit Account”) for the purpose of funding distribution payments to be distributed to Eligible Investors by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: RSA Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in In the Matter of Ross, Sinclair & Associates, LLC, *et al.*, Administrative Proceeding File No. 3-17315.

50. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors, and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government.

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

52. The Fund Administrator shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with the Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Deposit Accounts.

53. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls (e.g., check number and check amount) before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

K. Procedures for Distributing the Fair Fund

54. Following the Commission’s issuance of an order to distribute the Fair Fund to Eligible Investors as provided for in the Plan, the Fund Administrator shall commence the distributions to all Eligible Investors as promptly as possible following the transfer of funds from the BFS to the Escrow Account at the Bank.

55. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this check-cashing period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below in Paragraphs 58-62 below.

56. Payments to each Eligible Investor will be preceded or accompanied by a communication that includes, as appropriate:

- (a) A statement characterizing the distribution;
- (b) A statement that checks will be void after ninety (90) days and cannot be reissued after ninety (90) days from the date the original check was issued;
- (c) A statement that reissued checks will expire on the later of ninety (90) days from the date of the original check or forty-five (45) days from the date of the reissued check;

- (d) A statement that the tax treatment of the distribution is the responsibility of each Eligible Investor and that the Eligible Investors should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
- (e) Contact information for the Fund Administrator for questions regarding the Distribution Payment.

57. Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of securities law violations.

L. Wind-up and Reconciliation

58. The Fund Administrator is authorized to reissue checks to Eligible Investors upon the receipt of a valid, written request from the Eligible Investor. Such reissued checks will be void at the later of ninety (90) days from issuance of the original check or forty-five (45) days from the reissuance, and in no event will a replacement check be reissued after ninety (90) days from the date of original issuance.

59. The Fund Administrator will research and attempt to locate all Eligible Investors whose checks are returned to the Fund Administrator as undeliverable by the USPS. However, the Eligible Investor has the burden of providing the Fund Administrator with any changes to his, her, or its mailing address after submission of the Certification Form. The Fund Administrator will mail a reissued check to the updated address, subject to the time limits detailed herein.

60. In cases where an Eligible Investor is unable to endorse a Distribution Payment (e.g., as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Investor, or a lawful representative, for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Fund Administrator. If such

change is properly documented in the sole discretion of the Fund Administrator, the Fund Administrator will issue an appropriately reissued Distribution Payment, subject to the time limits detailed herein.

61. The Fund Administrator will make reasonable efforts to contact Eligible Investors to follow-up on the status of uncashed Distribution Payments over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

62. The Fund Administrator will work with the Bank 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.

63. Following the conclusion of any efforts by the Fund Administrator to locate any such Eligible Investors, the amount of all uncashed checks will be credited to the Net Fair Fund and may, along with any other remaining funds, be distributed to the remaining Eligible Investors, if so ordered by the Commission.

M. Other Rights and Powers

64. The Fund Administrator is authorized to enter into agreements with financial institutions, (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Fund Administrator under this Plan.

65. The Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the Secretary by delegated authority or an Administrative Law Judge; and/or any investor information provided by Commission staff.

66. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission, including all proceedings with respect to the administration, processing, and calculations of the distribution payments and the determination of all related controversies.

67. The Commission reserves its right to amend this Plan from time to time, and retains jurisdiction and control over this matter for the purpose of amendment and any and all other matters that may arise under or relate to this Plan.

N. Accountings

68. The Fund Administrator shall provide to the Commission staff a progress report and a quarterly account statement in a format to be provided by Commission staff, within forty-five (45) days of the Commission's approval of the Plan, and shall provide to Commission staff additional reports and quarterly account statements within ten (10) days after the end of every calendar quarter. Such progress reports shall inform the Commission staff of the activities and status of the Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Fair Fund, including among other things, an interim accounting of all monies in the Fair Fund.

69. When the final distribution is completed, the Fund Administrator shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Fund Administrator shall make arrangement for the final payment of taxes and all other outstanding fees and expenses, and submit a final accounting in a Commission

approved format to Commission staff, pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for approval by the Commission prior to termination of the Fair Fund, cancellation of the bond, and discharge of the Fund Administrator.

O. Amendments and procedural deadline extensions

70. The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan and to effectuate the general purposes of the Plan. The Fund Administrator will inform Commission staff of any changes needed to this Plan. Upon approval by the Commission staff, the Fund administrator may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Commission approval is required by amending this Plan prior to implementation of the change.

71. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

P. Disposition of Undistributed Funds

72. After the final disbursement to Eligible Investors from the Fair Fund, all funds remaining in the residual account will be transferred to the Commission for transfer to the U.S. Treasury after the final accounting is approved by the Commission.

Q. Document Retention

73. The Fund Administrator will retain all documents in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission staff direction. In addition, the Fund Administrator will shut down the Fair Fund website established specifically for the administration of the Fair Fund six (6) months after the closing of the Escrow and Deposit

Accounts, or at such earlier time as the Fund Administrator determines with concurrence of the Commission staff.

R. Termination of the Fair Fund

74. The Fair Fund will be eligible for termination, and the Fund Administrator eligible for discharge and cancellation of its bond, after all of the following have occurred: (a) all taxes, fees, and expenses have been paid; (b) all remaining funds have been paid to the Commission for transfer to the U.S. Treasury; and (c) a final accounting has been approved by the Commission. When the Commission has approved the final accounting, the Commission staff will seek an order from the Commission: (a) to send the remaining funds to the U.S. Treasury; (b) to terminate the Fair Fund; (c) to discharge the Fund Administrator; and (d) to cancel the Fund Administrator's bond.

VI. NOTICE AND COMMENT PERIOD

75. The Plan Notice will be published in the SEC Docket and on the Commission's website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the publication of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) 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 3-17315" in the subject line. Comments received will be available to the public. Persons should only submit comments that they wish to make publicly available.