

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87145 / September 27, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5377 / September 27, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19545

In the Matter of

**BMO HARRIS FINANCIAL
ADVISORS, INC. AND
BMO ASSET
MANAGEMENT CORP.,**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against BMO Harris Financial Advisors, Inc. (“BMO Harris Financial Advisors”) and BMO Asset Management Corp. (“BMO Asset Mgmt” and, together with BMO Harris Financial Advisors, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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 Section 15(b) of the Securities

Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers 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’ Offers, the Commission finds¹ that:

SUMMARY

1. These proceedings arise from two affiliated advisers, BMO Harris Financial Advisors and BMO Asset Mgmt, failing to disclose certain conflicts of interest concerning a retail investment advisory program, known as the Managed Asset Allocation Program (“MAAP”), they advised. These conflicts related to (1) BMO Asset Mgmt and BMO Harris Financial Advisors investing MAAP in proprietary mutual funds (“Proprietary Mutual Funds”), and (2) BMO Harris Financial Advisors selecting higher-cost share classes of Proprietary Mutual Funds and certain other mutual funds for advisory clients that financially benefited BMO Harris Financial Advisors when lower-cost share classes were available in those same funds.

2. BMO Harris Financial Advisors offers discretionary advisory services to retail clients through, among other things, MAAP. MAAP is composed of several centrally-managed model portfolios of mutual funds that are based on certain risk tolerances. While BMO Harris Financial Advisors offers its clients the opportunity to invest in MAAP, BMO Asset Mgmt evaluates and selects the mutual funds in MAAP.

3. From at least July 2012 through March 2016, BMO Harris Financial Advisors and BMO Asset Mgmt failed to disclose that they preferred their Proprietary Mutual Funds and invested approximately 50% of MAAP client assets in Proprietary Mutual Funds. This practice resulted in a financial benefit to BMO Asset Mgmt through, among other things, additional management fees. Neither BMO Harris Financial Advisors nor BMO Asset Mgmt disclosed this conflict of interest and practice to clients.

4. In addition, from at least July 2012 through September 2015, BMO Harris Financial Advisors invested MAAP client assets in higher-cost share classes of Proprietary Mutual Funds and certain other mutual funds when lower-cost share classes were available. By doing so, BMO Harris Financial Advisors received compensation via revenue sharing arrangements that it would not have otherwise received if the lower-cost share class had been selected. By selecting the higher-cost share class, BMO Harris Financial Advisors further benefitted by avoiding paying transaction costs to its clearing broker (“Clearing Broker”) that it otherwise would have paid on lower-cost share classes. Moreover, the higher-cost share class reduced the returns of BMO Harris Financial Advisors’ clients. BMO Harris Financial Advisors did not disclose this conflict of

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

interest and practice to clients. By investing client assets in the higher-cost share class, BMO Harris Financial Advisors also violated its duty to seek best execution for clients.

RESPONDENTS

5. BMO Harris Financial Advisors, Inc. (“BMO Harris Financial Advisors”), a wholly-owned subsidiary of a Canadian bank, is a Delaware company headquartered in Chicago, Illinois. BMO Harris Financial Advisors has been registered with the Commission as an investment adviser and a broker-dealer since 2005. BMO Harris Financial Advisors offers investment advisory, brokerage, and insurance services to individuals, trusts, non-profit organizations, corporations, and retirement accounts, primarily through its approximately 250 financial advisors. BMO Harris Financial Advisors had regulatory assets under management of approximately \$4.1 billion as reported in its Form ADV, dated April 1, 2019.

6. BMO Asset Management Corp. (“BMO Asset Mgmt”), a wholly-owned subsidiary of a Canadian bank and under common control with BMO Harris Financial Advisors, is a Delaware company headquartered in Chicago, Illinois. BMO Asset Mgmt has been registered with the Commission as an investment adviser since 1989. BMO Asset Mgmt provides discretionary and non-discretionary services to institutions, individuals, third-party sponsors of wrap fee programs, and common and collective portfolios of an affiliated bank. These advisory services are provided through separately managed accounts, wrap fee programs, mutual funds, and/or private funds. BMO Asset Mgmt had regulatory assets under management of approximately \$36.8 billion as reported in its Form ADV, dated April 1, 2019.

FACTS

Respondents Failed to Disclose a Practice of Maintaining Approximately 50% of MAAP Assets in Proprietary Mutual Funds

7. BMO Harris Financial Advisors provides advisory services to retail clients through various programs. In July 2012, BMO Harris Financial Advisors merged with another financial services firm that offered and managed MAAP and a number of mutual funds. This financial services firm had invested MAAP in a number of its proprietary mutual funds. The largest of BMO Harris Financial Advisors’ investment advisory products became MAAP. Between July 2012 and March 2016, the AUM in MAAP ranged from \$1.5 billion to \$2.7 billion.

8. MAAP was designed to allow clients to diversify their investments through one account. BMO Harris Financial Advisors offered several different centrally-managed model allocation portfolios within MAAP to enable clients to choose a model that suited their investment objectives and risk tolerances. Client assets were then invested pursuant to a model portfolio of mutual funds that fit within the objectives of the client’s specific investment strategy. MAAP was a wrap fee program for which clients paid BMO Harris Financial Advisors an all-inclusive fee for asset management and trade execution. BMO Harris Financial Advisors then contracted with BMO Asset Mgmt to provide advisory services for MAAP.

9. BMO Asset Mgmt performed the monitoring, allocation, evaluation, and selection of mutual funds for MAAP clients. It made all decisions to include, maintain, or remove a mutual fund from MAAP portfolios.

10. BMO Asset Mgmt also managed several Proprietary Mutual Funds. For its role in managing these Proprietary Mutual Funds, BMO Asset Mgmt separately earned management and administrative fees based on AUM in the funds.

11. From July 2012 through March 2016 (“Relevant Period 1”), BMO Asset Mgmt continued the predecessor firm’s practice of investing 50% of MAAP assets in Proprietary Mutual Funds. This practice increased AUM in the Proprietary Mutual Funds, and as the manager for those Proprietary Mutual Funds, BMO Asset Mgmt financially benefitted through an increase in its management fees. During Relevant Period 1, BMO Harris Financial Advisors and BMO Asset Mgmt failed to disclose the conflicts of interest associated with their practice of investing MAAP assets in Proprietary Mutual Funds.

12. Before a mutual fund could be added to a MAAP portfolio, BMO Asset Mgmt required its research team to approve the fund and add it to a master list of eligible mutual funds (the “Master List”). When adding non-proprietary mutual funds to the Master List, BMO Asset Mgmt generally surveyed the market, performed due diligence on several funds, and then approved what it believed were the funds best suited for MAAP. In contrast, when adding a Proprietary Mutual Fund to the Master List, BMO Asset Mgmt did not survey the market for options to evaluate, but analyzed the Proprietary Mutual Fund only.

13. Moreover, when considering funds for the Master List and MAAP, BMO Asset Mgmt evaluated the lower-cost institutional share class for both Proprietary Mutual Funds and non-proprietary funds. The lower-cost institutional share class of non-proprietary funds generally was selected for MAAP. But the higher-cost, non-institutional share class for Proprietary Mutual Funds always was selected for MAAP. As a result, when adding Proprietary Mutual Funds to the Master List, BMO Asset Mgmt failed to evaluate the performance of the Proprietary Mutual Fund share class ultimately selected for MAAP portfolios, which had higher costs and lower performance than the institutional share class of the Proprietary Mutual Funds.

14. During Relevant Period 1, MAAP assets invested in Proprietary Mutual Funds remained around 50%. As of March 31, 2016, Proprietary Mutual Funds in MAAP amounted to approximately \$1.4 billion out of a total MAAP AUM of \$2.7 billion.

BMO Harris Financial Advisors Failed to Disclose Its Conflicts of Interest in Selecting Higher-Cost Share Classes for Clients that Benefitted BMO Harris Financial Advisors

Background

15. Mutual funds typically offer investors different types of shares or “share classes.” Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is their fee structure.

16. For example, some mutual fund share classes charge 12b-1 or shareholder servicing fees to cover fund distribution or sometimes shareholder service expenses (“Retail Class” shares). These recurring fees, which are included in a mutual fund’s total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund’s assets on an ongoing basis and paid to the fund’s distributor or principal underwriter, which generally remits the 12b-1 or shareholder servicing fees to the broker-dealer that distributed or sold the shares. Mutual funds may also offer other share classes with expense ratios that may be higher or lower than the Retail Class shares.

17. Many mutual funds also offer share classes that do not charge 12b-1 or shareholder servicing fees (e.g., “Institutional Class” or “Class I” shares (collectively, “Class I shares”). An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will almost always earn higher returns – than other share classes. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

BMO Harris Financial Advisors’ Other Disclosure Failures

18. From July 2012 through September 2015 (“Relevant Period 2”), BMO Harris Financial Advisors failed to disclose to its clients that it invested MAAP assets in higher-cost, Retail Class shares when lower-cost share classes were available for the same fund, for which BMO Harris Financial Advisors received the following, undisclosed financial benefits: (1) BMO Harris Financial Advisors received revenue sharing payments from its Clearing Broker, and (2) BMO Harris Financial Advisors avoided paying transaction fees it would have paid for client purchases of Class I shares in the Proprietary Mutual Funds.

19. BMO Harris Financial Advisors entered into a revenue sharing contract with its Clearing Broker pursuant to which BMO Harris Financial Advisors received certain revenue of the Clearing Broker based on the amount of client assets invested in Retail Class shares of mutual funds. Under the contract, BMO Harris Financial Advisors received revenue sharing for client assets held in higher-cost share classes, primarily from the Proprietary Mutual Funds, when lower-cost share classes for the same mutual fund were available. BMO Harris Financial Advisors received a greater percentage of the Clearing Broker’s revenue as the amount of BMO Harris Financial Advisors’ client assets in Retail Class shares of certain funds increased. BMO Harris Financial Advisors did not disclose adequately its conflicts of interest associated with the revenue sharing arrangement with its Clearing Broker.

20. BMO Harris Financial Advisors also financially benefited from selecting Retail Class shares by avoiding certain charges. Specifically, certain mutual fund transactions in BMO Harris Financial Advisors client accounts incurred clearance, or “ticket,” charges imposed by the Clearing Broker with which BMO Harris Financial Advisors had contracted to execute its client transactions. Pursuant to the client agreements, BMO Harris Financial Advisors paid any required ticket charges for client transactions. BMO Harris Financial Advisors’ Clearing Broker, however, did not impose ticket charges for Retail Class share transactions of certain mutual funds, but did impose such charges on Class I share class transactions. BMO Harris Financial Advisors did not

disclose to its clients that by picking more expensive share classes for the same fund, BMO Harris Financial Advisors would financially benefit by avoiding paying the clearance or ticket charges.

BMO Harris Financial Advisors Violated Its Duty of Best Execution

21. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to act for the benefit of their clients. That duty includes, among other things, an obligation to seek best execution for client transactions – *i.e.*, “to seek the most favorable terms reasonably available under the circumstances.” *In the Matter of Fidelity Management Research Company*, Advisers Act Rel. No. 2713 (Mar. 5, 2008) (settled order). By causing certain advisory clients to invest in fund share classes that charged 12b-1 or shareholder servicing fees when such clients were otherwise eligible for lower-cost share classes, BMO Harris Financial Advisors violated its duty to seek best execution for those transactions during Relevant Period 2.

Respondents Failed to Implement Written Policies and Procedures Reasonably Designed to Prevent Violations of the Advisers Act and the Rules Thereunder

22. Respondents did not implement their written policies and procedures with respect to the disclosure of financial conflicts of interest. From 2012 to 2016, Respondents’ written policies and procedures required that they avoid any actual or potential conflict of interest and that any such conflict be disclosed to clients with discretionary managed accounts. Respondents’ policies and procedures were insufficiently implemented so that (a) the disclosures relating to the above conflicts of interest were sufficiently reviewed and (b) the above conflicts of interest were adequately disclosed to MAAP clients. As a result, Respondents did not implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

VIOLATIONS

23. As a result of the conduct described above, BMO Harris Financial Advisors and BMO Asset Mgmt willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from, directly or indirectly, engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

24. As a result of the conduct described above, BMO Harris Financial Advisors and BMO Asset Mgmt willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and its rules.

UNDERTAKINGS

Respondents have undertaken to:

25. Notice to Advisory Clients. Within 30 days of entry of the Order, Respondents shall provide via email or mail a copy of the Order to clients that were affected by the conduct described in this Order.

26. Certification of Compliance by Respondents. Respondents shall certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Corey A. Schuster, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street, Washington, DC, 20549, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549, no later than 60 days from the date of the completion of the undertaking.

² “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act, “means no more than 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.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. BMO Harris Financial Advisors and BMO Asset Mgmt cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. BMO Harris Financial Advisors and BMO Asset Mgmt are censured.

C. Respondents shall comply with the undertakings enumerated in Paragraphs 25 through 26, above.

D. Respondents shall pay, jointly and severally, disgorgement of \$25 million, prejudgment interest of \$4,733,542, and a civil monetary penalty totaling \$8.25 million as follows:

1. Within 10 days of the issuance of this Order, Respondents shall deposit \$37,983,542 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. § 3717.
2. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the distribution of the disgorgement, civil penalties, prejudgment interest, and other monies paid by Respondents pursuant to this Order to Affected Clients, as that term is defined below in Paragraph 4 of this Subsection D. This Fair Fund includes: (i) BMO Harris Financial Advisors' disgorgement of investment advisory fees related to client assets in MAAP accounts; (ii) BMO Asset Mgmt's disgorgement of management fees related to Proprietary Mutual Funds in MAAP accounts; (iii) BMO Harris Financial Advisors' disgorgement of revenue sharing proceeds received from its Clearing Broker related to assets in MAAP accounts; (iv) BMO Harris Financial Advisors' disgorgement of avoided transaction fees that it would have had to pay to its Clearing Broker had MAAP account clients invested in Institutional Class Shares; and (v) each Respondent's respective penalty and prejudgment interest. 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 their 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 BMO Harris Financial Advisors or BMO Asset Mgmt 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.

3. Respondents shall be responsible for administering the Fair Fund and may hire a professional to assist them in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
4. Respondents shall pay from the Fair Fund to their “Affected Clients”—defined as current or former BMO Harris Financial Advisors advisory clients who: (i) during Relevant Period 1, paid advisory fees to BMO Harris Financial Advisors related to a MAAP account and paid management fees to BMO Asset Mgmt related to Proprietary Mutual Funds held in a MAAP account; or (ii) during Relevant Period 2, owned mutual fund share classes related to BMO Harris Financial Advisors’ receipt of revenue sharing proceeds from its Clearing Broker that BMO Harris Financial Advisors would not have received if the clients had owned lower-cost share classes, or who owned mutual fund share classes related to BMO Harris Financial Advisors’ avoidance of transaction fees that it would have had to pay its Clearing Broker had the clients invested in lower-cost share classes—an amount representing a proportion of: (i) each Affected Client’s payment of respective investment advisory fees to BMO Harris Financial Advisors and payment of respective management fees to BMO Asset Mgmt during Relevant Period 1; and/or (ii) BMO Harris Financial Advisors’ revenue sharing proceeds and avoided transaction costs related to each Affected Client during Relevant Period 2. No portion of the Fair Fund shall be paid to any Affected Client account in which any Respondent’s current or former officers, directors, investment adviser representatives, or registered representatives, or any of their family members, has a financial interest.

5. Respondents shall, within 60 days of the entry of this Order, submit a proposed disbursement calculation (the "Calculation") to the Commission staff for review and approval. At or around the time of submission of the Calculation to the staff, Respondents, along with any third-parties or professionals retained by Respondents to assist in formulating the methodology for the Calculation and/or administration of the distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondents also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for its review. If the Commission staff objects to the Calculation, 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 Respondents are notified of the objection, and the revised Calculation shall be subject to all of the provisions of Subsection D.
6. After the Calculation has been approved by the Commission staff, Respondents shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each Affected Client. The Payment File should identify, at a minimum: (1) the name of each Affected Client, and (2) the exact amount of the payment to be made from the Fair Fund to each Affected Client. An amount of \$10 or less shall be considered *de minimis* and shall not be paid to such Affected Client, but rather shall be distributed pro rata to Affected Clients that are owed greater than \$10 as determined by the Calculation.
7. Respondents shall complete the disbursement of all amounts payable to Affected Clients within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph 10 of this Subsection D. If Respondents are unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an Affected Client or a beneficial owner of an Affected Client 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 when the distribution of funds is complete and before the final accounting provided for in Paragraph 9 of this Subsection D. 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 each Respondent as a Respondent 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 Corey A. Schuster, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012.

8. A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondents shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
9. Within 150 days after Respondents complete the distribution of all amounts payable to Affected Clients, Respondents shall return all undisbursed funds to the Commission pursuant to the instruction set forth in Paragraph 7 of this Subsection D. Respondents shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, 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: (i) the amount paid or credited to each payee; (ii) the date of each payment or credit; (iii) the check

number or other identifier of money transferred or credited to the person or entity; (iv) the amount of any returned payment and the date received; (v) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made for any reason; (vi) the total amount, if any, forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that each Respondent has made payments from the Fair Fund to Affected Clients in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondents in these proceedings and the file number of these proceedings, to Corey A. Schuster, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012, or such other address the Commission staff may provide. 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.

10. 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 Fair 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.

By the Commission.

Vanessa A. Countryman
Secretary