

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89407 / July 28, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5551 / July 28, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19895

In the Matter of

**VALIC Financial Advisors,
Inc.,**

Respondent.

**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 VALIC Financial Advisors, Inc. (“VFA” or “Respondent”).

II.

In anticipation of the institution of these proceedings, VFA has 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 it and the subject matter of these proceedings, which are admitted, VFA consents 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 VFA's Offer, the Commission finds¹ that:

Summary

1. VALIC Financial Advisors, Inc. ("VFA") breached its fiduciary duty to its clients in connection with its mutual fund share class selection practices with regard to its receipt of revenue sharing, avoidance of transaction fees, and receipt of compensation pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees), as well as its duty to seek best execution.

2. VFA has wrap fee arrangements with clients that allow it to recommend portfolio models managed by third-party investment advisers. In 2010, VFA instructed a third-party adviser to select from mutual funds available in the no-transaction-fee program ("NTF Program") offered by VFA's clearing firm ("Clearing Firm") when adding a new fund to a model. The selection of NTF funds provided key financial benefits to VFA. First, VFA's agreement with its Clearing Firm provided that the Clearing Firm would pay VFA (a) a portion of the revenue the Clearing Firm received from the mutual fund sponsor ("Revenue Sharing") to include its funds in the NTF Program and (b) any 12b-1 fees paid on client mutual fund investments. There were many 12b-1 fee-paying mutual fund share classes in the NTF Program, and VFA received Revenue Sharing only for mutual funds included in the NTF Program. In most instances, the mutual funds the third-party adviser selected had a lower-cost share class available that either did not pay 12b-1 fees or that would not have led to VFA receiving Revenue Sharing. As a result, clients were generally invested in more expensive mutual funds and mutual fund share classes. Second, VFA had agreed to pay execution costs for clients participating in its wrap fee programs, but by instructing the third-party adviser to limit new funds to those in the NTF Program for which VFA would not pay any execution costs, VFA avoided paying any execution costs for the clients' purchases or sales of the mutual funds in the NTF Program. VFA did not disclose that it had provided this instruction to the third-party adviser or the conflicts of interest related thereto. Rather, VFA provided false and misleading disclosures regarding these issues.

3. Similarly, when VFA directly purchased, recommended, or held mutual funds for advisory clients, VFA also received 12b-1 fees and Revenue Sharing and (as to wrap fee accounts) avoided paying certain transaction fees while providing misleading disclosures. In addition, as to these clients, by causing them to invest in more expensive share classes, when share classes of the same funds were available that presented a more favorable value under the particular circumstances in place at the time of the transaction, VFA also violated its duty to seek best execution for those transactions.

4. As a result of this conduct, since January 1, 2014, VFA received over \$13.2 million in financial benefits. In March of 2017, VFA disclosed for the first time the receipt of Revenue Sharing, but still did not fully and fairly disclose that conflict of interest. In June 2017, VFA

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

instructed its Clearing Firm to stop paying Revenue Sharing to VFA, but left its clients in the higher-cost share classes until at least January 2018, when VFA began the process of converting client mutual fund investments to available lower-cost share classes of the same funds. In January 2019, after being contacted by Commission staff, VFA began reimbursing to clients all 12b-1 fees it received for the period from January 1, 2014, through March 31, 2016, when it began contemporaneously rebating 12b-1 fees to clients. As a result, VFA has repaid clients approximately \$2.3 million in 12b-1 fees, plus interest. VFA, although eligible to do so, did not self-report to the Commission pursuant to the Division of Enforcement’s Share Class Selection Disclosure Initiative (“SCSD Initiative”).²

5. As a result of this conduct, and VFA’s failure to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection practices, VFA willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

6. VFA, a corporation that was duly organized and existed under the laws of the State of Texas and headquartered in Houston, Texas, has been registered with the Commission as an investment adviser since October 10, 1997 and as a broker-dealer since June 20, 1997. In its latest Form ADV filed with the Commission dated March 30, 2020, VFA reported regulatory assets under management of \$21,116,994,032.

Overview of the MIP Program

7. VFA sponsors and serves as the investment adviser to the Managed Investment Program (“MIP Program”), which is a wrap program that allows VFA to contract with third-party advisers (referred to as “strategists” by VFA) to design and implement various portfolio models from which clients in this program could choose. While a small number of the MIP Program accounts were managed internally by VFA through March 2019, the strategists generally manage the vast majority of MIP Program accounts.

8. Most of the MIP Program models invest exclusively in mutual funds

Mutual Fund Share Classes

9. 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 the fee structure.

10. For example, some mutual fund share classes pay 12b-1 fees to cover certain costs of fund distribution, marketing, or shareholder servicing or make other recurring payments relating to shareholder servicing. These recurring charges, which are included in a mutual fund’s total

² See Div. of Enforcement, U.S. Sec. & Exch. Comm’n, *Share Class Selection Disclosure Initiative*, <https://www.sec.gov/enforce/announcement/scsd-initiative> (last modified Feb. 12, 2018).

annual fund operating expenses, vary by share class, but often range from 25 to 100 basis points (equal to 0.25% to 1.00%). These charges are deducted from the mutual fund's assets on an ongoing basis and generally are paid to the broker-dealer that distributes the shares to the investors or provides shareholder services. The greater these charges, the greater the mutual fund share class's overall expense ratio.

11. Many mutual funds also offer lower-cost share classes that do not pay 12b-1 fees and make less or no recurring payments relating to shareholder servicing, and thus have lower expense ratios than other share classes for the same fund (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")).³ 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 generally earn higher returns – than one who holds a share class of the same fund that has a higher expense ratio. 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.

Undisclosed Conflicts of Interest Regarding Revenue Sharing

12. Many mutual fund sponsors or other affiliates pay the Clearing Firm a recurring fee to have some or all of the share classes of funds they advise offered as part of the Clearing Firm's mutual fund programs.

13. In its NTF Program, the Clearing Firm did not charge a transaction fee for the purchase or sale of mutual funds. The Clearing Firm generally charged a higher recurring fee for a mutual fund to be part of the NTF Program as compared to being sold outside of that program. Mutual fund share classes sold through the NTF Program generally had higher expense ratios than mutual fund share classes sold outside that program.

14. The agreement between VFA and the Clearing Firm provided that the Clearing Firm would share with VFA a portion of this recurring revenue from mutual fund investments based on the amount of VFA's client assets invested in certain mutual funds in the NTF Program.⁴ This agreement is generally referred to as a Revenue Sharing agreement. During the relevant time frame, VFA twice renegotiated its agreement with the Clearing Firm to increase the Revenue Sharing it received.

15. In 2010, VFA directed the strategist responsible for the vast majority of the MIP Program model portfolios to limit the selection of new funds for the portfolios to NTF Program funds. Moreover, VFA regularly influenced which specific funds this strategist selected for the model portfolios when the strategist substituted a new fund to replace, for example, a non-

³ Share classes that do not charge 12b-1 fees or otherwise have lower expense ratios than other share classes in a fund also go by a variety of other names in the mutual fund industry. Examples may, though not always, include "Advisor," "Class F2," "Class Y" and "Class Z" shares. As used in this Order, the term "Class I shares" refers generically to share classes that do not charge 12b-1 fees or other recurring expenses related to shareholder servicing and therefore generally have lower expense ratios than other share classes in a fund.

⁴ VFA clients indirectly paid these fees as they were included in the expense ratios of the mutual fund share classes in which they invested.

performing fund in the model portfolio. These NTF Program funds ultimately generated \$7,611,063 in Revenue Sharing for VFA from January 1, 2014 until June 2017. As an investment adviser, VFA was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and/or its associated persons and its clients that could affect the advisory relationship and how those conflicts could affect the investment advice VFA provided its clients. To meet this fiduciary obligation, VFA was required to provide its advisory clients with full and fair disclosure that is sufficiently specific so that they could understand the conflicts of interest concerning VFA's advice and could have an informed basis on which they could consent to or reject the conflicts.

16. Prior to March 31, 2017, VFA provided no disclosure of this Revenue Sharing arrangement or the conflicts it created. To the contrary, until December 2018, VFA disclosed that client investment accounts were subject to fees and charges imposed by third parties, which in the case of mutual fund investments included mutual fund investment management fees, 12b-1 fees, administrative servicing fees, short term redemption fees, and contingent deferred sales charges, custodial fees and clearing, custody and other transaction charges and service fees, but misleadingly stated that “[o]ther parties may receive a portion of these third party [mutual fund] fees” without also disclosing that VFA was receiving a portion of these fees.

17. On March 31, 2017, VFA amended its Form ADV to state the following:

Pursuant to an agreement with [the Clearing Firm], VFA, on behalf of [Clearing Firm], provides various services to our customers, such as assisting with opening customer accounts, updating client account information, answering customer questions, helping customers with using brokerage and account services, monitoring customer accounts, transmitting orders, and maintaining books and records. In exchange for these services, VFA is paid a fee by [the Clearing Firm], which is a percentage based on the assets in customer accounts that are invested in “no transaction fee” (NTF) mutual funds in [the Clearing Firm's] revenue sharing program.

This payment present[s] a conflict of interest between VFA and its customers because VFA receives compensation based upon NTF mutual fund assets, creating an incentive for VFA to recommend to customers NTF mutual funds over other investments in order to receive these revenues. In addition, within the MIP program, VFA has an incentive to recommend an MIP portfolio that includes NTF mutual funds over an MIP portfolio that includes fewer or no NTF mutual funds[.]VFA registered representatives do not receive any compensation associated with these payments that VFA receives from [the Clearing Firm].

18. This amended disclosure did not fully and fairly disclose the conflict of interest. For example, among other things, the disclosure did not explain that VFA had instructed the primary strategist to use mutual funds available in the NTF Program, that the NTF Program excluded certain mutual funds that did not pay VFA additional revenue and would thus not be among those considered for clients even if they were otherwise appropriate or better for clients.

The investments available in the NTF Program were generally more expensive than those otherwise available to clients.

19. In June 2017, VFA instructed the Clearing Firm to stop making Revenue Sharing payments to VFA related to MIP Program accounts, but clients remained invested in share classes in the NTF Program even when lower-cost share classes of the same funds were available. In January 2018, VFA began converting clients to lower-cost share classes.

Undisclosed Conflicts of Interest to Avoid Paying Transaction Fees

20. Because the accounts in the MIP Program were wrap accounts, VFA was responsible for paying transaction fees on securities transactions. As a result, VFA financially benefitted by selecting mutual fund share classes that could be purchased without a transaction fee rather than other mutual funds and mutual fund share classes sold through the Clearing Firm. Specifically, certain mutual fund transactions in VFA client accounts incurred clearance, or “ticket,” charges imposed by the Clearing Firm to execute VFA’s client transactions. Pursuant to client agreements, VFA paid any required ticket charges for client transactions. VFA’s Form ADV brochure provided that “[t]he Firm charges an advisory fee, which is negotiable, for your account that covers the provision of initial and ongoing investment services **and the execution of securities transactions.**” (Emphasis added.) VFA’s Clearing Firm, however, did not impose ticket charges for mutual funds sold through the NTF Program, but did impose such charges on other mutual funds and mutual fund share class transactions. Therefore, VFA’s selection of NTF share classes within wrap accounts provided it with certain additional financial benefits that affected the investment recommendations made to clients and generally resulted in clients being placed in more expensive mutual fund investments.

21. As these NTF funds did not assess transaction fees associated with the execution of securities transactions that would have been payable by VFA, VFA saved over \$3.5 million since January 1, 2014. The ability to avoid the payment of these transaction fees by selecting only NTF share classes for the MIP portfolio models presented a conflict of interest for VFA by incentivizing it to purchase these NTF funds and share classes on behalf of its clients rather than funds or share classes that resulted in VFA having to pay transaction fees.

22. During the relevant period, VFA failed to provide any disclosure with respect to this conduct or its associated conflicts of interest. Among other things, VFA did not disclose that in 2010 and after it limited new funds in the portfolio models to only those mutual funds and share classes available in the Clearing Firm’s NTF Program and that lower-cost share classes of these mutual funds were available outside of the NTF Program for a transaction fee. Moreover, VFA’s Form ADV brochure was misleading. It stated that “[t]he Firm charges an advisory fee, which is negotiable, for your account that covers the provision of initial and ongoing investment services and the execution of securities transactions.” The statement was misleading because while simultaneously promising to cover transaction fees, it failed to state, among other things, that VFA was almost exclusively placing its clients in NTF Program funds that assessed no transaction fees, that it excluded other investments otherwise available to clients, and that it had instructed the primary strategist to use investments that were in the NTF Program.

Undisclosed Conflicts of Interests Regarding 12b-1 Fees

23. From at least January 1, 2014 through March 31, 2016, with regard to its internally managed accounts, VFA's IARs advised clients to purchase or hold mutual fund share classes that charged 12b-1 fees when lower-cost share classes of those same funds were available to those clients.

24. Moreover, the NTF Program used in the MIP Program contained primarily share classes that generally were more expensive than the Class I shares that were available outside the NTF Program that charged a transaction fee. VFA's MIP Program wrap brochure provided false disclosures regarding its receipt of 12b-1 fees. First, VFA disclosed that that it would receive 12b-1 fees for mutual funds that "were purchased and transferred into the Managed Investment Program." Otherwise, VFA's disclosure stated only that with respect to these fees and charges associated with mutual funds, including 12b-1 fees, that "[o]ther parties may receive a portion of these third party fees." In a separate paragraph regarding mutual fund shares that were purchased and transferred into the MIP Program, VFA stated that "12b-1 fees [would] be shared with your Investment Adviser Representative," but these disclosures were misleading in that they imply that VFA would not receive 12b-1 fees on shares purchased in the MIP Program and were insufficient to disclose that VFA received 12b-1 fees, how VFA selected share classes, or the conflicts associated with that policy. Contrary to these disclosures, VFA was receiving 12b-1 fees for investments selected within the MIP Program.

25. VFA received approximately \$2,118,538 in 12b-1 fees that it would not have collected had VFA's advisory clients been invested in the available lower-cost share classes.

26. VFA began rebating 12b-1 fees after March 31, 2016. Moreover, after being contacted by the Commission staff, VFA returned approximately \$2.3 million in 12b-1 fees, plus interest, to its clients.

Best Execution Failures

27. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.⁵

28. During the relevant period, VFA caused certain advisory clients to invest in certain mutual fund share classes when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances at the time of the transactions. As a result, VFA violated its duty to seek best execution for those transactions from at least January 1, 2014, through July 24, 2018.

Compliance Deficiencies

⁵ See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

29. During the relevant period, VFA failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with either (1) the disclosure of conflicts of interest presented by its and the primary strategist's mutual fund share selection practices, VFA's receipt of Revenue Sharing payments and avoidance of transaction fees in wrap accounts, and its direction to the primary strategist regarding the same, or (2) making recommendations of mutual fund share classes that were in the best interest of its advisory clients.

VFA's Remedial Efforts

30. Although VFA did not self-report pursuant to the SCSD Initiative even though it was eligible to do so, in determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent.

Violations

31. As a result of the conduct described above, VFA willfully violated Section 206(2) of the Advisers Act, which 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." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of 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. 180,194-95 (1963)).

32. As a result of the conduct described above, VFA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Undertakings

33. VFA has undertaken to:

- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning mutual fund share class selection, Revenue Sharing, transaction fees, and 12b-1 fees.
- b. Within 30 days of the entry of this Order, evaluate whether existing clients should be moved to a lower-cost or lower-revenue-sharing-paying share class and move clients as necessary.
- c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, VFA's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with disclosures regarding mutual fund share class selection, Revenue Sharing, and transaction fees in wrap accounts.

d. Within 30 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who, during the relevant periods purchased or held 12b-1-fee-paying share classes of mutual funds, or purchased or held NTF funds that paid Revenue Sharing, or had entered into wrap arrangements with VFA and were invested in mutual funds in the NTF Program) (hereinafter, “affected investors”)) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

e. Within 45 days of the entry of this Order, 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 certification and supporting material shall be submitted to Barbara Gunn, Assistant Regional Director, Asset Management Unit, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Suite, Unit 18, Fort Worth, Texas 76102., or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

f. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for 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 the last day.

IV.

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

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. VFA 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 promulgated thereunder.

B. VFA is censured.

C. VFA shall pay disgorgement and prejudgment interest, and a civil monetary penalty totaling \$19,943,753 as follows:

(i) VFA shall pay disgorgement of \$13,232,681 and prejudgment interest of \$2,211,072, consistent with the provisions of this Subsection C and subject to the offset provisions of Subsection C (ix) below.

(ii) VFA shall pay a civil monetary penalty in the amount of \$4.5 million consistent with the provisions of this Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty, disgorgement, and prejudgment interest described above for distribution to affected investors' accounts. Amounts ordered to be paid as a civil money penalty pursuant to this Order shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, VFA agrees that in any Related Investor Action, it shall not argue that they it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of VFA's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, VFA agrees that it 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 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 VFA 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.

(iv) Within ten (10) days of the issuance of this Order, VFA shall deposit the full amount of disgorgement, prejudgment interest, and the civil money penalty, less monies already distributed to investors, into an escrow account at a financial institution not unacceptable to the Commission staff, and VFA shall provide 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 - 17 C.F.R. § 201.600, or pursuant to 31 U.S.C. § 3717. If VFA fails to make full payment within ten (10) days of the entry of this Order, post-order interest will accrue and will become due to the Commission immediately at the discretion of the staff of the Commission without further application to the Commission.

(v) VFA shall be responsible for administering the Fair Fund and may hire a professional not unacceptable to the staff of the Commission, at its own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by VFA and shall not be paid out of the Fair Fund.

(vi) VFA shall distribute from the Fair Fund to each affected investor an amount representing: (a) the 12b-1 fees, Revenue Sharing, and/or transaction fees attributable to each affected investor during the relevant periods; and (b) reasonable interest paid on such fees, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the

Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which VFA or its past or present officers or directors have a financial interest.

(vii) VFA shall, within ninety (90) 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 proposed Calculation to the staff, VFA shall make itself available, and shall require any third-parties or professionals retained by VFA to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. VFA shall also 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 VFA’s proposed Calculation or any of its information or supporting documentation, VFA shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that VFA is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) VFA shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, (3) the application of a *de minimis* threshold, and (4) the amount of reasonable interest paid.

(ix) VFA shall complete the disbursement of all amounts payable to affected investor accounts within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. The amount VFA paid to affected investors on or after May 16, 2019 up until the lapse of 90 days following the date of staff’s acceptance of the Payment File for 12b-1 fees VFA received during January 1, 2014 through March 31, 2016, will dollar for dollar offset the disgorgement and prejudgment interest payable to the Commission pursuant to this Subsection C., subject to approval by the Commission staff. VFA shall notify the Commission staff of the date and the amount paid in the initial distribution.

(x) If VFA is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond VFA’s control, VFA 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 the funds is complete and before the final accounting provided for in Paragraph (xii) below is submitted to the Commission staff.

Payment must be made in one of the following ways:

1. VFA may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. VFA 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. VFA 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 VALIC Financial Advisors, Inc. as the 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 Barbara Gunn, Assistant Regional Director, Asset Management Unit, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Suite, Unit 18, Fort Worth, Texas 76102.

(xi) 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. VFA 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 VFA and shall not be paid out of the Fair Fund.

(xii) Within 150 days after VFA completes the disbursement of all amounts payable to affected investors, VFA shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. VFA 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 include, but not be limited to: (1) the amount paid to each affected investor, with reasonable interest; (2) the date of each payment; (3) the check number or other identifier of money transferred or credited to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor 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 VFA has made payments from the Fair Fund to affected investors in accordance with the Payment File approved by the Commission staff. VFA shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies VALIC Financial Advisors, Inc. as the respondent in these proceedings and the file number of these proceedings to Barbara Gunn, Assistant Regional Director, Asset Management Unit, Fort Worth Regional Office, Securities and Exchange Commission, 801 Cherry Suite, Unit 18, Fort Worth, Texas 76102., or such other address as the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and VFA shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. VFA shall comply with the undertakings enumerated in Section III, paragraphs 33.a through 33.e above.

By the Commission.

Vanessa A. Countryman
Secretary