

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5976 / March 4, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20792

In the Matter of

**Educators Financial
Services, Inc.**

Respondent.

**AMENDED ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Educators Financial Services, Inc. (“Educators Financial” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent 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, Respondent consents to the entry of this Amended Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to 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 Respondent's Offer, the Commission finds that:

Summary

1. Educators Financial, a registered investment adviser that primarily markets its services to teachers, violated the Advisers Act as a result of its billing practices and mutual fund share class selection for clients. With respect to its billing practices, Educators Financial (i) failed to consistently aggregate the value of all accounts held by family members living in the same household when determining the fee rate, causing certain clients to pay a higher advisory fee than they should have; and (ii) failed to refund pre-paid advisory fees after clients terminated the advisory relationship. Educators Financial also purchased, recommended, or held for advisory clients mutual fund share classes that charged 12b-1 fees instead of lower-cost share classes of the same funds that were available to the clients. Educators Financial failed to adequately disclose all material facts regarding this conflict of interest and breached its duty to seek best execution by causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when share classes of the same funds that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions were available to the clients. Finally, Educators Financial failed 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 billing practices and its mutual fund share class selection.

Respondent

2. Respondent Educators Financial Services, Inc., incorporated in Minnesota and headquartered in Cambridge, Minnesota, has been registered with the Commission as an investment adviser since March 2004. In its Form ADV dated February 19, 2021, Educators Financial reported having more than \$1.636 billion in regulatory assets under management.

Failure to Apply Advisory Fee Schedule

3. Educators Financial charged clients an advisory fee pursuant to a fee schedule that set the fee using the "gross value of [the client's] managed assets" and that reduced the advisory fee Educators Financial charged a client as that client's assets under management increased. This fee schedule, which was incorporated by reference in client advisory agreements, distributed to clients upon request, and disclosed in Educators Financial's Form ADV Part 2A ("brochure") filed with the Commission, provided an incentive for clients to deposit more assets to reach the next breakpoint, and thereby receive a lower fee rate.

4. Educators Financial's fee schedule was set forth in the firm's brochure. From at least November 2014 to the present, Educators Financial's brochure included the following fee schedule:

**Fee Schedule for All Standard Accounts
(Standard, RFP School District, and EFS Advisors Choice)**

	<u>Quarterly Fee</u>	<u>Annual Fee</u>
\$0.00 - \$210,000	0.26%	1.04%
\$210,001 - \$500,000	0.24%	0.96%
\$500,001 - \$1,000,000	0.22%	0.88%
\$1,000,001 and Higher	0.20%	0.80%
*Fixed Income and Cash Management Only	0.15%	0.60%

5. To determine the “gross value of the client’s managed assets” and the corresponding advisory fee, Educators Financial’s policy was to aggregate the value of all accounts held by family members living in the same household (*i.e.*, related family members who share the same address).

6. Educators Financial, however, did not consistently aggregate the value of all accounts held by family members living in the same household. For example, where two spouses each held an individual retirement account, Educators Financial did not always consider both accounts when determining the advisory fee. As a result, Educators Financial did not consistently apply a lower advisory fee when the aggregate of clients’ household accounts met the threshold for a lower advisory fee and certain Educators Financial clients paid a higher advisory fee than they should have.

7. Consequently, Educators Financial collected additional advisory fees as a result of its failure to consistently aggregate household assets when assessing fees.

Failure to Refund Pre-Paid Advisory Fees Upon Account Termination

8. Since at least November 2014, Educators Financial has required its advisory clients to pay advisory fees in advance of each quarter for which advisory services were rendered. Educators Financial’s written policies and procedures also have instructed that the firm’s advisory agreements “clearly state that the client gets a pro-rata refund if the contract is terminated before the end of the relevant period.”

9. Consistent with these written policies and procedures, the firm’s advisory agreements from at least November 2014 to December 2018 stated that “[i]nvestments managed less than a full quarter will be charged on a prorated basis.”

10. From December 2018 to April 2019, Educators Financial disclosed in advisory agreements with new clients that pre-paid “advisory fee(s) may be refunded upon request on a daily pro-rata basis within 30 days of cancellation.”

11. Notwithstanding its disclosures and written policies and procedures, Educators Financial has not, in most cases, refunded pre-paid advisory fees since November 2014 upon termination of client relationships.

12. Consequently, Educators Financial collected fees from clients for advisory services that were not rendered, and improperly kept such fees in contravention to its written policies and procedures and certain of its client disclosures.

Mutual Fund Share Class Selection

13. 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.

14. For example, some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. 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 (equal to 0.25% to 1.00%). 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 fees to the broker-dealer that distributed or sold the shares.

15. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., “Institutional Class” or “Class I” shares (collectively, “Class I shares”)).¹ 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 charges 12b-1 fees. 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.

16. Since at least November 2014, Educators Financial purchased, recommended or held² for advisory clients mutual funds that charged 12b-1 fees, including when lower-cost share classes of those same funds were available to those clients. Educators Financial’s affiliated broker-dealer received 12b-1 fees from Educators Financial clients’ investments during this period, including fees that it would not have collected had Educators Financial’s clients been invested in the available lower-cost share classes.

17. As an investment adviser, Educators Financial 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

¹ Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as “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.

² In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

affect the advice Educators Financial provided its clients. To meet this fiduciary obligation, Educators Financial 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 Educators Financial's advice about investing in different classes of mutual funds and could have an informed basis on which they could consent to or reject the conflicts.

18. Prior to March 2018, Educators Financial did not disclose to clients in its brochure or otherwise that its affiliated broker-dealer collected 12b-1 fees. From March 2018 to February 2020, Educators Financial disclosed that its affiliated broker-dealer received 12b-1 fees and that such practice constituted a conflict of interest, but did not disclose that in many instances lower-cost share classes were available to clients. Educators Financial also failed to identify this new 12b-1 disclosure as a "material change" in its brochure during this period. In March 2020, EFS updated its brochure to add disclosure that lower-cost share classes were available to clients and identified this disclosure as a material change. In early 2021, EFS revised its practices such that it will recommend 12b-1 fee paying share classes where they will result in a lower overall cost to the client and updated its brochure accordingly.

19. In addition to the above, in some cases Educators Financial invested clients in 12b-1 fee-paying mutual funds where an unaffiliated broker-dealer received 12b-1 fees on the clients' investments. In those circumstances, Educators Financial did not consistently evaluate whether there were available lower-cost share classes for those clients.

20. Educators Financial, although eligible to do so, did not self-report to the Commission pursuant to the Division of Enforcement's (the "Division") Share Class Selection Disclosure Initiative ("SCSD Initiative").³

Best Execution Failures

21. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.⁴

22. By causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when other share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, Educators Financial violated its duty to seek best execution for those transactions.

Compliance Deficiencies

23. During the Relevant Period, Educators Financial failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and

³ 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).

⁴ 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).

the rules thereunder in connection with: (i) billing practices (i.e., its application of its fee schedule to client accounts and refunding of pre-paid advisory fees upon account termination); and (ii) mutual fund share class selection practices.

Violations

24. As a result of the conduct described above, Educators Financial willfully⁵ violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963); *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992); *SEC v. Yorkville Advisors, LLC*, 12 Civ. 7728, 2013 WL 3989054, at *3 (S.D.N.Y. Aug. 2, 2013).

25. As a result of the conduct described above, Educators Financial willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

Disgorgement

26. The disgorgement and prejudgment interest ordered in Paragraph IV.C is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible pursuant to the respondent-administered distribution described in Section IV below. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 ("Exchange Act").

⁵ "Willfully," for purposes of imposing relief under 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[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

Undertakings

27. Respondent has undertaken to:

Certification

- a. Respondent has certified to Commission staff, in writing, that it has evaluated whether existing clients invested in mutual funds that pay 12b-1 fees to Respondent's affiliated broker-dealer should be moved to a lower-cost share class and has moved clients as necessary.
- b. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraph 27.a. above.

Additional Undertakings

- c. Notice to Advisory Clients. Respondent has notified affected investors (*i.e.*, those former and current clients who were financially harmed by the practices detailed above (hereinafter, "affected investors")) of the settlement terms of this Order in a manner not unacceptable to the Commission staff.
- d. Retention of Independent Compliance Consultant. Respondent shall retain, within 30 days of the issuance of this Order, the services of an Independent Compliance Consultant ("Independent Consultant") not unacceptable to the staff of the Commission and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant's engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant's compensation and expenses shall be borne exclusively by Respondent.
- e. Independent Consultant's Reviews. Respondent shall require the Independent Consultant to:
 - i. review the firm's practices, disclosures, and written policies and procedures concerning billing of client accounts and mutual fund share class selection, including share class selection for existing clients' current holdings, as well as the firm's written policies and procedures related thereto;
 - ii. at the end of the review, which in no event shall be more than 180 days after the entry of this Order, submit a written and dated report

to Educators Financial and the Commission staff that shall include a description of the review performed, the names of the individuals who performed the review, the Independent Consultant's findings and recommendations for changes or improvements to the disclosures, policies, and procedures, and a procedure for implementing the recommended changes and improvements;

- iii. conduct one annual review 365 days from the date of the issuance of the Independent Consultant's initial report, to assess whether Educators Financial is complying with its then-current disclosures, policies, and procedures, and whether the then-current disclosures, policies, and procedures are effective in achieving their stated purposes; and
 - iv. at the end of the annual review, which in no event shall be more than 180 days from the date that the annual review commenced, submit a written annual report to Educators Financial and the Commission staff that shall include a description of its findings and recommendations, if any, for additional changes or improvements to the disclosures, policies, and procedures, and a procedure for implementing the recommended changes and improvements.
- f. Respondent shall, within forty-five (45) days of receipt of each of the Independent Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, Respondent shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but Respondent shall instead propose in writing to the Independent Consultant and Commission staff an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant. Respondent shall attempt in good faith to reach an agreement with the Independent Consultant on any recommendations objected to by Respondent. Within fifteen (15) days after the conclusion of the discussion and evaluation by Respondent and the Independent Consultant, Respondent shall require that the Independent Consultant inform Respondent and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation. At the same time, Respondent may seek approval from the Commission staff to not adopt recommendations that the Respondent can demonstrate to be unduly burdensome, impractical, or inappropriate.

In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal within thirty (30) days and the Commission staff does not agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, Respondent shall abide by the determinations of the Independent Consultant.

- g. Within thirty (30) days of Respondent's adoption and implementation of all of the recommendations in the Independent Consultant's reports that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Independent Consultant and the Commission staff that Respondent has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.
- h. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.
- i. To ensure the independence of the Independent Consultant, Respondent (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- j. Respondent shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Educators Financial, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement shall also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Educators Financial, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- k. Respondent shall not be in, and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.
- l. Certificate of Compliance. Respondent shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance no later than sixty (60) days from the completion of each of the undertakings. The certification and supporting material shall be submitted to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, 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.
- m. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings set forth in paragraphs 27.c. through 27.l. above. 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 Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Educators Financial 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. Respondent Educators Financial is censured.

C. Respondent Educators Financial shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$1,107,490.55 as follows:

- (i) Respondent shall pay disgorgement of \$727,843.61 and prejudgment interest of \$129,646.94, consistent with the provisions of this Subsection C.

(ii) Respondent shall pay a civil money penalty in the amount of \$250,000, 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 penalties, disgorgement, and prejudgment interest referenced in this Subsection C. 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, Respondent agrees that in any Related Investor Action, it shall not argue that 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 Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent 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 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 Respondent 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 entry of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the "Fair Fund"), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(v) Respondent 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 Respondent and shall not be paid out of the Fair Fund.

(vi) Respondent shall pay from the Fair Fund to each affected investor an amount representing the financial harm incurred by the affected investor as a result of the violations set forth above, with reasonable interest paid on such financial harm, 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 Respondent, or any of its current or former officers or directors, has a financial interest.

(vii) Respondent shall, within thirty (30) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third parties or professionals retained by Respondent 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. Respondent also shall provide 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 Respondent's proposed Calculation or any of its information or supporting documentation, Respondent 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 the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent 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 to be paid to each affected investor.

(ix) Respondent shall complete the disbursement of all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the final distribution.

(x) If Respondent 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 Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for further disposition as approved by the Commission, when the distribution of funds is complete and before the final accounting provided for in Paragraph (xii) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Respondent 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

(c) Respondent 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 Educators Financial Services, Inc. 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 Jeffrey Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide.

(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. Respondent shall be responsible for 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 any such professional services shall be borne by Respondent and shall not be paid by the Fair Fund.

(xii) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. Respondent 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 payee, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate any prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification, together with proof

and supporting documentation of such payment in a form acceptable to Commission staff, shall be sent to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other address as the Commission staff may provide. Respondent 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.

(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. Respondent shall comply with the undertakings enumerated in Section III, Paragraph 27. subparts c. through l., above.

By the Commission.

Vanessa A. Countryman
Secretary