

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6030 / May 19, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20865**

**In the Matter of**

**FIRST REPUBLIC  
INVESTMENT  
MANAGEMENT, INC.,**

**Respondent.**

**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 First Republic Investment Management, Inc. (“FRIM” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, FRIM 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, FRIM consents to the entry of this 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<sup>1</sup> that

#### **Summary**

1. These proceedings arise out of breaches of fiduciary duties by registered investment adviser FRIM in connection with its affiliated broker's receipt of third-party compensation from advisory client investments without fully and fairly disclosing its conflicts of interest. In particular, since at least February 2014, FRIM invested clients in certain mutual funds and cash sweep products that resulted in its affiliated broker (the "Affiliated Broker") receiving revenue sharing payments pursuant to an agreement with its unaffiliated clearing broker (the "Clearing Broker"). FRIM provided inadequate disclosure of the conflicts of interest arising from this compensation. FRIM also breached its duty to seek best execution by causing certain advisory clients to invest in share classes of mutual funds that paid revenue sharing when share classes of the same funds were available to the clients that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions. Furthermore, FRIM 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 mutual fund and mutual fund share class selection practices and cash sweep revenue sharing practices.

#### **Respondent**

2. First Republic Investment Management, Inc. ("FRIM"), incorporated in New York and headquartered in San Francisco, California, has been registered with the Commission as an investment adviser since 1999. In its Form ADV filed on March 30, 2022, FRIM reported it had approximately \$136,818,578,467 in regulatory assets under management. FRIM provides advisory services through investment adviser representatives called Wealth Managers, many of whom are registered representatives of FRIM's Affiliated Broker. FRIM charges its advisory clients an asset management fee, which often includes cash balances in the assets under management upon which the fee was charged. In March 2019, in connection with FRIM's self-report of violations under the Share Class Selection Disclosure Initiative,<sup>2</sup> the Commission instituted settled public administrative and cease-and-desist proceedings against FRIM, to which FRIM consented without admitting or denying the Commission's findings and provided disgorgement to affected investors. *First Republic Investment Management, Inc.*, Advisers Act Rel. No. 5192 (March 11, 2019).

#### **Relevant Entity**

3. First Republic Securities Company, LLC ("Affiliated Broker"), a Nevada corporation based in San Francisco, California, has been registered with the Commission as a

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

<sup>2</sup> 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).

broker-dealer since 2001. The Affiliated Broker acted as an introducing broker-dealer for the majority of FRIM's advisory clients. The Affiliated Broker is affiliated with FRIM because the two firms have common ownership.

### **Revenue Sharing From Certain Mutual Funds**

4. Many mutual funds pay the Clearing Broker a recurring fee to have some or all of the share classes of their funds offered as part of the Clearing Broker's mutual fund programs.

5. When investors purchase or sell mutual funds through the Clearing Broker, the Clearing Broker may charge a transaction fee. Here, the Clearing Broker had a no-transaction-fee ("NTF") mutual fund program ("NTF Program"), through which investors could purchase and sell mutual funds without paying a transaction fee. Mutual fund share classes sold through the NTF Program generally had higher expense ratios paid by clients and a higher recurring fee paid to the Clearing Broker, than other share classes of the same fund offered by the Clearing Broker with lower expense ratios and less or no revenue sharing.

6. Since at least February 2014, the agreement between FRIM's Affiliated Broker and the Clearing Broker provided that the Clearing Broker would share a portion of this recurring fee, or NTF revenue sharing, with the Affiliated Broker based on customer assets invested in mutual funds in the NTF Program, including FRIM's advisory client assets. FRIM's clients indirectly paid the NTF revenue sharing payments when they were included in the expense ratios of the mutual funds in which they invested. The payments the Affiliated Broker received under the agreement created a financial incentive for FRIM to recommend mutual funds covered by the agreement over other investments, including lower-cost share classes of the same mutual fund, when rendering investment advice to its clients. The Affiliated Broker did not share NTF revenue with the Wealth Managers.

7. As an investment adviser, FRIM was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients that could affect the advisory relationship and how those conflicts could affect the advice it provided its clients. To meet this fiduciary obligation, FRIM was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning its investment advice and have an informed basis on which to consent to or reject the conflicts.

8. As of February 2014, FRIM did not disclose that its Affiliated Broker received NTF revenue from client investments in advisory accounts or otherwise put clients on notice regarding the conflicts of interest inherent in this arrangement.

9. In March 2016, FRIM, for the first time, generally disclosed in its Form ADV Part 2A brochure ("Brochure") that it and its affiliates may retain fees or compensation paid for services provided with respect to client investments and this presents a conflict of interest for FRIM. The disclosure made no mention of revenue sharing from mutual funds, NTF revenue sharing in particular, and otherwise failed to provide full and fair disclosure of all material facts

regarding the conflict of interests that arose when it recommended, invested in, or held advisory client funds in the NTF Program.

10. In March 2018, FRIM again updated its Brochure regarding the NTF Program to state that it did recommend NTF mutual funds that paid revenue sharing and stated that “[o]nce certain asset thresholds of [NTF] mutual funds are met, [Clearing Broker] shares revenue with [the Affiliated Broker], providing an incentive for registered representatives of [the Affiliated Broker] to recommend mutual funds that participate in the [NTF] program.” It also added that “[The Affiliated Broker’s] participation in the [NTF] program presents a potential conflict of interest because it provides an incentive for registered representatives of [the Affiliated Broker] to recommend mutual funds that participate in the [NTF] program.” The disclosure remained inadequate in that, for example, FRIM failed to state that generally (1) a lower-cost share class of the same mutual fund was available to clients that paid less or no revenue sharing, and (2) mutual funds or share classes in the NTF Program are more expensive than other funds or share classes outside the NTF Program.

11. In January 2019, FRIM amended its Brochure to provide enhanced disclosure regarding the NTF Program that stated it will select the lowest-cost share class of a mutual fund for which its clients are eligible and is available to its custodians, and moved its clients from higher-cost mutual fund share classes to lower-cost share classes of the same mutual fund where available.

### **Revenue Sharing From Cash Sweep Money Market Funds**

12. A sweep account is a money market mutual fund or bank deposit account used by broker-dealers to hold uninvested cash (e.g., incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money (“Sweep Account”). A money market mutual fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act (a “money market fund”). Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used as cash sweep vehicles. The investment yields and expense ratio of a money market fund can differ from fund to fund and from share class to share class of the same fund.

13. The Clearing Broker agreed to share with the Affiliated Broker a portion of the revenue the Clearing Broker received in connection with certain third party money market funds and share classes offered to Sweep Accounts. Under this arrangement, the Clearing Broker provided the Affiliated Broker with a list of many money market funds and share classes as Sweep Account options for FRIM’s advisory clients. The amount of revenue sharing the Affiliated Broker received in connection with money market funds varied depending on the money market fund and share class and the amount of assets held in the fund.

14. Since at least February 2014, FRIM designated a bank deposit account program as its preferred Sweep Account option. FRIM instructed clients who did not wish to use the designated bank deposit account program to contact their FRIM Wealth Manager to discuss

alternative investment options and options for holding cash balances in their accounts, including money market funds. After speaking with their Wealth Managers, FRIM advisory clients invested in various money market funds and share classes, some of which paid revenue sharing to the Affiliated Broker.

15. FRIM had a conflict of interest when it recommended money market funds available as Sweep Account options. In particular, the money market funds and share classes available on the Clearing Broker's platform wherein the Affiliated Broker received revenue sharing generally charged higher fees and at times returned lower investment yields to clients. Conversely, the money market funds and share classes available on Clearing Broker's platform that pay no or lower revenue sharing to the Affiliated Broker generally charged lower fees and at times returned higher investment yields to clients.

16. FRIM recommended and invested advisory clients' uninvested cash in money market funds and share classes for which the Clearing Broker agreed to pay the Affiliated Broker revenue sharing even though the Clearing Broker made several money market funds and share classes available to FRIM advisory clients that at times would have paid FRIM's clients higher yields, but for which the Affiliated Broker would have received less or no revenue sharing. FRIM's interests were in conflict with its advisory clients' interest because FRIM had an incentive to recommend money market funds and share classes that paid the greatest amount of revenue sharing to its Affiliated Broker. The Affiliated Broker did not share money market fund revenue sharing with the Wealth Managers.

17. Since at least February 2014, FRIM did not provide full and fair disclosure of all material facts regarding the conflict of interest that arose concerning money market funds used as Sweep Accounts that resulted in the Affiliated Broker receiving revenue sharing, while lower-cost money market funds or share classes of the same money market funds were available that did not result in the Clearing Broker making revenue sharing payments to the Affiliated Broker. Until March 2017, FRIM's Brochure, while disclosing that the Affiliated Broker may earn income from cash swept into money market funds, did not disclose that the Affiliated Broker did in fact earn income on cash swept into these accounts. Moreover, not until December 2019, did FRIM disclose that lower-cost money market sweep funds and share classes that did not pay revenue sharing or paid lower revenue sharing to the Affiliated Broker were available. FRIM also did not fulfill its duty of care obligations when it recommended money market funds without determining whether the money market funds it used as cash sweep vehicles were in the best interests of its advisory clients.

18. In January 2020, FRIM stopped making available to its clients money market funds used as Sweep Accounts that resulted in the Affiliated Broker receiving revenue sharing. Subsequently, FRIM moved all clients out of such Sweep Accounts.

### **Best Execution Failures**

19. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.<sup>3</sup>

20. By causing certain advisory clients to invest in share classes of mutual funds in the Clearing Broker's NTF Program or share classes of money market funds that resulted in revenue sharing payments from the Clearing Broker to the Affiliated Broker when share classes of the same funds were available to clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, FRIM violated its duty to seek best execution for those transactions.

### **Compliance Deficiencies**

21. Since at least 2014, FRIM 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 either (1) the disclosure of the conflicts of interest presented by its mutual fund, money market fund, and share class selection practices, or (2) making recommendations of mutual fund share classes that were in the best interest of its advisory clients.

### **Disgorgement**

22. The disgorgement and prejudgment interest ordered in Section IV is consistent with equitable principles, does not exceed the net profits from the violations, and is awarded for the benefit of and will be distributed to harmed investors to the extent feasible. 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 Exchange Act.

### **Violations**

23. As a result of the conduct described above, Respondent willfully<sup>4</sup> 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

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<sup>3</sup> 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).

<sup>4</sup> "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).

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)).

24. As a result of the conduct described above, Respondent 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**

25. Respondent will do the following:

#### **Steps Taken to Date**

- a. Respondent has certified that it has reviewed and corrected as necessary all relevant disclosure documents concerning its selection process of mutual funds, mutual fund share classes, and money market sweep funds.
- b. Respondent has certified that it has evaluated whether existing clients should be moved to a lower-cost share class, mutual fund or money market sweep fund and engaged with relevant third parties to move clients as necessary.
- c. Respondent has certified that it has evaluated, updated (if necessary), and reviewed for the effectiveness of their implementation, Respondent’s policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and rules thereunder in connection with both (1) the disclosure of the conflicts of interest presented by its mutual fund and mutual fund share class selection practices, and money market sweep fund selection, and (2) making recommendations of mutual fund share classes that are in the best interest of its advisory clients.
- d. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraphs 25.a through 25.c above.

#### **Steps to be Taken**

- e. Within 45 days of the entry of this Order, Respondent shall notify 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 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.

- f. Within 45 days of the entry of this Order, certify, in writing, compliance with the undertaking in paragraph 25.e 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kimberly Frederick, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, 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.
- g. 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 Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent 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 is censured.
- C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$1,825,953 as follows:
  - (i) Respondent shall pay disgorgement of \$1,332,664 and prejudgment interest of \$243,289 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 described above for distribution to affected investors. 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 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 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 the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit into the escrow account 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 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: (a) financial harm by the practices discussed above, and (b) 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. 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 45 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 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 90 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; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid.

(ix) Respondent shall complete the disbursement of all amounts payable to affected investors within 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 initial 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 transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act 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 FRIM 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 Kimberly Frederick, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, 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 out of the Fair Fund.

(xii) Within 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. The 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 the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a 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 Kimberly Frederick, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 1961 Stout St Suite 1700, Denver, CO 80294, 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 25(a) through (f) above.

By the Commission.

Vanessa A. Countryman  
Secretary