

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-11645**

In the Matter of	:
	:
PA FUND MANAGEMENT LLC f/k/a	:
PIMCO ADVISORS FUND	:
MANAGEMENT LLC, PEA CAPITAL	:
LLC f/k/a PIMCO EQUITY ADVISORS	:
LLC, AND PA DISTRIBUTORS LLC	:
f/k/a PIMCO ADVISORS	:
DISTRIBUTORS LLC,	:
	:
Respondents.	:

FINAL PLAN OF DISTRIBUTION

I. Introduction

1. This Distribution Plan sets forth the procedures by which to distribute to investors, for the period spanning February 2002 through April 2003, their proportionate share of the fund established to compensate such investors for injury they may have suffered as a result of market timing in four funds that were formerly part of the PIMCO Equity Funds: Multi-Manager Series (“Equity Funds” or “Funds”), Growth Fund, Opportunity Fund, Target Fund, and Innovation Fund. Losses and fees will be paid to all shareholders who were directly harmed by the market timer, to the extent that these shareholders can be identified and located. The Fair Fund is not intended to compensate investors for losses they incurred because of fluctuations in securities markets.

II. Background

2. On September 13, 2004, the Securities and Exchange Commission (“Commission”) entered an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against PA Fund Management LLC¹ (f/k/a PIMCO Advisors Fund Management LLC) (“PAFM”), PEA Capital LLC (f/k/a PIMCO Equity Advisors LLC) (“PEA”), and PA Distributors LLC² (f/k/a PIMCO Advisors Distributors LLC) (“PAD”) (collectively, “Respondents”).³
3. In the Order, the Commission found that the Respondents violated, directly or indirectly, Sections 204A, 206(1), and 206(2) of the Investment Advisers Act of 1940, and Sections 17(d) and 34(b) of the Investment Company Act of 1940. None of the Respondents admitted or denied any of the Commission’s findings in the Order.

¹ Currently known as Allianz Global Investors Fund Management LLC.

² Currently known as Allianz Global Investors Distributors LLC.

³ *In the Matter of PA Fund Management LLC (f/k/a PIMCO Advisors Fund Management LLC), PEA Capital LLC (f/k/a PIMCO Equity Advisors LLC), and PA Distributors LLC (f/k/a PIMCO Advisors Distributors LLC)*, Admin. Proc. File No. 3-11645 (September 13, 2004) (“Order”).

4. The Commission found, among other things, that Respondents, entrusted with advising and distributing the Funds, represented to investors that the Funds would limit a practice known as market timing. Consistent with this policy, the Funds actively policed market timing activities and prevented some Fund shareholders from engaging in it. However, without any disclosure to Fund shareholders (and contrary to representations), Respondents negotiated an agreement with Canary Capital Partners LLC (“Canary”), a hedge fund, that allowed Canary to market time four of the Equity Funds: the Growth Fund (from April 11, 2002 until November 21, 2002), the Opportunity Fund (from April 11, 2002 through April 3, 2003), the Target Fund (from February 8, 2002 until November 21, 2002), and the Innovation Fund (from February 8, 2002 through February 21, 2002). Canary is disqualified from participation in this Distribution Plan and within 30 days of the Commission’s final approval of this Distribution Plan, Canary will be notified that it is ineligible to receive a distribution.
5. The Order required Respondents to pay \$10 million in disgorgement (of which \$1,616,738 was previously returned to the Funds). The Order further required Respondents to pay civil money penalties totaling \$40 million: \$20 million by PEA, \$10 million by PAFM, and \$10 million by PAD.
6. A Fair Fund was established for these funds.⁴ Since February 22, 2005, the Fair Fund has been maintained by the United States Department of the Treasury Bureau of Public Debt (“Bureau of Public Debt”), earning interest through investment in short-term U.S. government obligations. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds.

Total Penalty and Disgorgement	\$50,000,000
Amount Previously Returned to Funds	(1,616,738)
Interest from Deposit of Monies in Fair Fund (through April 30, 2010)	7,095,743
Total to be Distributed	\$55,479,005

⁴ “Fair Fund” is defined in Section 308(a) of the Sarbanes-Oxley Act of 2002.

III. Engagement of the Independent Distribution Consultant

7. Pursuant to the Order, in October 2004, Michael F. Koehn, Ph.D., was engaged as the Independent Distribution Consultant (“IDC”) in this matter. As IDC, Dr. Koehn was asked to develop a Distribution Plan for the Fair Fund, and any interest or earnings thereon, according to a methodology developed in consultation with Respondents and acceptable to the staff of the Commission and the independent Trustees of the Equity Funds.
8. Pursuant to the Order, the IDC’s compensation and expenses shall be borne exclusively by Respondents.

IV. Qualifications of the IDC

9. Dr. Koehn is an economist specializing in applied microeconomics and finance. He has performed research and given economic testimony in antitrust, regulatory, tax, and other business litigation matters and is the author of several publications on such topics as mutual funds, banking and finance, energy economics, and real estate. He is the co-founder of Analysis Group, Inc. an economic and financial consulting firm.

V. Representations of the IDC

10. The IDC received full cooperation from Respondents, including access to files, books, records and personnel.
11. The IDC has directed this work, but has been assisted by individuals at Analysis Group, Inc., who performed certain calculations under the direction of the IDC.
12. Under the terms of the Order, the IDC agrees that for a period of two years from completion of the engagement, the IDC will not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondents, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such.

VI. The Distribution Plan

13. The table below summarizes the planned distributions to investors in the Funds.

Fund	Total Distribution
Target	\$ 2,327,178
Growth	15,758,012
Opportunity	5,305,575
Innovation	26,601
Total to be Distributed to Shareholders	\$23,417,366

14. The distribution of the Fair Fund is based on shareholders' losses, defined as shareholder dilution and transaction costs, caused by the timing activity in the Growth, Opportunity, Target and Innovation Funds. Harmed shareholders will receive their losses suffered and will also receive an allocation, based on their assets, of advisory fees paid by the funds that suffered losses and an allocation, based on their harm, of interest earned on the Fair Fund from February 22, 2005 through April 30, 2010. Upon termination of the Fair Fund, any monies that remain in the Fair Fund will be transferred to the Commission for remittance to the U.S. Treasury.

A. Identifying Harmed Investors

15. Investors purchased shares in the Equity Funds through one of three distribution channels.

- a. Direct Accounts – Direct shareholders are retail shareholders, joint accounts and Individual Retirement Accounts (“IRAs”) that are held directly with the Equity Funds. In these accounts, the shareholder of record and the ultimate shareholder are the same.
- b. Omnibus Accounts – Omnibus accounts are accounts in which the transactions of two or more individual investors are combined into the single account of an intermediary, such as a broker/dealer, who is the shareholder of record. An omnibus account is transparent if the shareholder of record has access to records identifying the actual beneficial owners and is opaque if the shareholder of record does not have access to such records. It is impossible to know the underlying

shareholder account information within each omnibus account without further information from the omnibus shareholder of record.

- c. Accounts of Retirement Plans – Retirement plan accounts are the accounts of any “employee benefit plan,” as defined in Section 3(3) of ERISA, which is not an Individual Retirement Account (“IRA”), whether or not the plan is subject to Title I of ERISA.

16. Shareholders from each of these three distribution channels are eligible to receive distributions.
17. The IDC has requested and received electronic shareholder data from the Funds’ transfer agent, including information related to direct shareholders, including those invested in retirement accounts, and omnibus accounts. This information is maintained confidentially and held exclusively for the Fair Fund Administrator (the “Fund Administrator”).
18. The Fund Administrator shall maintain in confidence shareholder identifying information and any other information relating to sub-account holders obtained from any Omnibus Account holder pursuant to this Distribution Plan, and shall not share such information with Respondents. The Fund Administrator, however, may share such information with its service providers or other parties to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other parties maintain such information in confidence.

B. Calculation of Losses to Individual Investors

19. The methods of calculation of each eligible investor’s share of the Fair Fund are intended to result in a payment to each eligible investor that restores the impaired value of the investor’s investment in the Funds. This impaired value (dilution plus transaction costs), is estimated using the methodology described in the Appendix to this Distribution Plan. The methods of calculation are intended by the Commission to fairly estimate the impaired value that each investor has suffered and make a payment in that amount. In the view of the IDC, this calculation will result in a fair and reasonable allocation of the Fair Fund.

20. The intent of the Distribution Plan is to distribute cash to shareholders in the form of checks or electronic deposits. The amount allocated to each eligible investor will include the net losses due to the timing activity; that is, at the individual investor level, any gains the investor may have realized due to the timing activity are netted against the losses. It will also include the return of fees.
21. A de minimis distribution amount will be set at \$10. To the extent that a shareholder's net losses plus return of fees are less than \$10, the losses and fees returned to that shareholder will be \$10. In the view of the IDC, this ensures that all shareholders who were harmed will receive at least \$10 and constitutes a fair and reasonable allocation of the Fair Fund.
22. Within an omnibus account there may be individual accounts with positive or negative timing dilution. Thus, if information about underlying shareholders were known, distributions to individual underlying shareholders may differ from those that would be made if the shareholder of record were treated as a single shareholder.
23. The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.
24. This Distribution Plan is subject to approval by the Commission and the Commission retains jurisdiction over the implementation of the Distribution Plan.

C. Amendments to the Distribution Plan

25. The IDC will inform the Commission staff of any changes in the Distribution Plan. Upon agreement with Commission staff, the IDC may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party or the Fund Administrator or upon the Commission's own motion.

VII. The Distribution Process

A. Fund Administrator

26. Rust Consulting, Inc. ("Rust") has been appointed by the Commission to serve as the administrator of the Fair Fund ("Fund Administrator") and will be compensated by

Respondents. Rust is a third-party service provider with extensive experience in class action and settlement matters, having provided services in class actions affecting over 100 million class members.

27. The Fund Administrator will provide customer support and communications programs that will become active at least by the time the first distribution occurs. These services will include a toll-free number and a website available to the public. The Commission retains the right to review and approve any material posted on the website. No login will be required to access the website, which will not contain shareholder-specific information.
28. The Fund Administrator will set up and staff a call center with operators trained and dedicated to responding to investor inquiries or concerns about the distribution process. The Fund Administrator will report on this activity periodically to the Independent Trustees of the Funds and to the IDC.
29. The IDC and Rust currently have an agreement in place requiring Rust to perform certain tasks in preparation for the forthcoming distribution of the Fair Fund. To date, Rust has successfully met its obligations under the agreement and the IDC believes that Rust will perform satisfactorily as the Fund Administrator.

B. Custody of the Fair Fund

30. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Fair Fund is currently deposited at the Bureau of Public Debt.
31. Under the Distribution Plan, the Fund Administrator will have no custody of, and only limited control of, the Fair Fund. In coordination with the IDC, the Fund Administrator will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for shareholders, preparing accountings, providing the information necessary to accomplish income tax compliance, distributing money from the Fair Fund to shareholders in accordance with and subject to approval of this Distribution Plan.
32. Upon approval of the Distribution Plan by the Commission, the Fund Administrator shall establish an account at Deutsche Bank, in the name of and bearing the Taxpayer

Identification Number of the Qualified Settlement Fund (“QSF”).⁵ The QSF Account will not be commingled with assets of Deutsche Bank and will not be subject to the claims of creditors.

33. The Fund Administrator shall be the signer on the QSF Account, subject to the continuing jurisdiction and control of the Commission. The Fund Administrator shall authorize Deutsche Bank to provide account information to the Tax Administrator. The Fund Administrator shall use the assets and earnings of the Fair Fund to provide payments to Investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs. The QSF Account shall be invested in direct obligations of the United States Government of a type and term necessary to meet the cash requirements of the payments to Investors, tax obligations and fees. Upon approval of an Order of Disbursement, Deutsche Bank will receive and hold monies to be distributed to shareholders in one or more dedicated escrow accounts.

C. Insurance

34. Deutsche Bank maintains a Financial Institutions (FI) Bond, including errors and omissions coverage, with an aggregate limit of 200,000,000 Euro and a Bankers Blanket Bond of 250,000,000 Euro. Deutsche Bank’s primary insurer is Chubb, a company which, as of its most recent renewal, was rated “A+XV” by A.M. Best.
35. Deutsche Bank annually assesses the adequacy of its policy limits through extensive analysis of historic loss data, exposure to loss and internal company controls. Deutsche Bank’s limits are reviewed annually by the bank’s Board of Directors.
36. A waiver of the bond required for the Fund Administrator by Rule 1105(c) is requested. Good cause for waiver exists for the reasons described herein: (1) the Fund Administrator will have no custody, and only limited control, of the Fair Fund; (2) the Fair Fund will be held by U.S. Treasury Bureau of Public Debt until immediately before transmittal of checks or electronic transfers to eligible investors; (3) funds will be transferred from U.S. Treasury Bureau of Public Debt to Deutsche Bank and those funds will be held in an escrow account, separate from bank assets, until presentation of a check

⁵ The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5.

or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to “positive pay” controls before honored by Deutsche Bank; and (5) both Deutsche Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud.

37. In lieu of bond, the Fund Administrator maintains and will continue to maintain insurance until termination of the Fair Fund. The primary insurer, Illinois Unions Ins. Co. (ACE USA) is a company which, as of its most recent renewal, was rated “A+ XV” by A.M. Best. The Fund Administrator maintains, and will continue to maintain until termination of the Fair Fund, E&O insurance in the amount of \$10,000,000. It has a policy limit of \$10,000,000 per occurrence and an overall limit of \$10,000,000 during the life of the policy. The Fund Administrator also maintains an additional \$5,000,000 in excess general insurance. Lastly, the Fund Administrator maintains a crime policy in the amount of \$5,000,000 per occurrence, which provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment, or delivery of funds as a result of fraudulent input, preparation or modification of computer instructions, data or fraudulent electronic transmissions or communications. These policies have been made available to the assigned SEC staff for review and have been deemed “not unacceptable.”

D. Procedures for Identifying and Distributing to Eligible Accountholders

38. The Fund Administrator has committed to use commercially reasonable efforts to identify and locate eligible current and former shareholders of record:

- a. Shareholders will be identified per Rule 17Ad-17 under the Securities Exchange Act of 1934.
- b. Current shareholder addresses will be systematically compared against the U.S. Postal Service’s forwarding address database.
- c. Current shareholders who are deemed “Lost” in accordance with Rule 17Ad-17 will not receive payments; instead, their payments will be added to the Undistributed Pool, described below in paragraph 61.

39. Both current and former shareholders are eligible to receive payments. Shareholders will not be required to pay fees to receive their distributions. Each eligible shareholder who suffered losses will receive a single aggregate payment or payments, which essentially includes net losses, fees paid, interest and a share of the remaining Fair Fund proportional to their losses.
40. The Fund Administrator will issue and mail checks to all eligible current and former shareholders who can be identified and located, other than omnibus shareholders.
41. Current shareholders will have the opportunity to reinvest their distribution into those same funds that gave rise to the distribution without incurring any initial fees or front-end loads of any sort.
42. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other related tax matters; (c) a statement that checks will be void 180 days after issuance; and (d) the name and contact information of a person to contact, to be used in the event of any questions regarding the distribution. Any communications to recipients or potential recipients of the distribution must be pre-approved by the Commission, while other proposed written communications, including, but not limited to, online communications, letters and emails to intermediary firms must be pre-approved by the IDC and either the Independent Trustees, a delegated subset of the Independent Trustees, or independent counsel to the Independent Trustees. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a Commission Fair Fund.
43. For returned or undelivered checks, the Fund Administrator will conduct historical research on the account in an effort to obtain a correct address and re-mail the check. If a current address cannot be obtained, the payment will be added to the Undistributed Pool.
44. All checks shall bear a stale date of 180 days from the date of issuance. Checks that are not negotiated within the stale date shall be voided and the issuing financial institution shall be instructed not to honor these voided checks. These amounts will be added to the Undistributed Pool.

E. Omnibus Accounts

45. In the case of all omnibus accounts, if the omnibus shareholder of record would receive less than \$1,000 if it were treated as an individual, the omnibus provider has a choice of either refusing the distribution or applying any distribution technique that the omnibus provider, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary, contractual or other legal obligations.⁶
46. If an omnibus shareholder of record would receive \$1,000 or more if it were treated as an individual, the shareholder of record has 60 days from the approval of the Distribution Plan by the Commission to decide among three options:⁷
- a. Analysis Group will calculate payments to beneficial owners and the Fund Administrator will execute the distributions based on account data and address files provided by the holder of record.
 - b. Analysis Group will calculate the payments to beneficial owners, based on account data and address files provided by the holder of record. Each beneficial owner who was harmed will receive at least \$10. The Fund Administrator will write a single check to the shareholder of record, but the holder of record will execute the distributions and certify to the Fund Administrator that such distribution has been made. If an omnibus provider elects to carry out the distribution under this subparagraph but fails to distribute the monies to the beneficial shareholders within the allotted time period or fails to certify that a distribution has been made in accordance with the calculations provided, the Fund Administrator will notify the Commission, the omnibus provider will be required to return the undistributed monies, and the undistributed monies will be added to the Undistributed Pool.
 - c. If the omnibus shareholder of record does not select option (a) or option (b) within 60 days of receipt of notice of the Distribution Plan, the Fund

⁶ Omnibus accountholders will be informed of the amount due as part of an outreach program conducted under the supervision of the IDC.

⁷ Shareholders of record of transparent omnibus accounts, also known as network accounts, will not be afforded the option in paragraph 46.c because the Fund Administrator has the necessary account information to calculate the payments in advance.

Administrator will provide the algorithm for calculating the individual payments to the beneficial owners. The omnibus holder of record will then provide the Fund Administrator with a certification stating that it will carry out the calculations described in this subparagraph, is prepared to make the distribution to the ultimate shareholders according to this Plan of Distribution, and will return any undistributed funds to the Fund Administrator.⁸ Upon the Fund Administrator's receipt of the omnibus shareholder's certification, the distribution will be made. If the Fund Administrator does not receive a certification, the monies allotted to that omnibus shareholder will be added to the Undistributed Pool. The Fund Administrator will maintain records of each attempt to contact an omnibus holder of record and each response received, if any.

47. Omnibus accounts that choose to have the Fund Administrator carry out all or part of the distribution to their beneficial owners may incur costs in preparing the necessary data for the Fund Administrator. Requests for reimbursement from these omnibus account holder firms will be paid by the Respondents to the extent that such costs are commercially reasonable in light of the amount to be distributed by such firms to beneficial shareholders. All requests for reimbursement are subject to a final review by the IDC and the Fund Administrator and may be approved, modified or rejected by the IDC.
48. Omnibus account shareholders of record should follow the procedures outlined in the Distribution Plan to distribute funds to ultimate shareholders. There may be instances, however, in which this may not be possible, e.g., when an opaque omnibus provider may not have maintained or cannot reasonably reconstruct account balances, or a transparent omnibus provider cannot identify or locate the beneficial owners. Omnibus providers may submit requests to alter the distribution procedures in writing to the Fund Administrator within 90 days of the mailing of the notice. They should explain: (a) the alteration(s) they plan to employ; and (b) the reasons for their request. The IDC will rule on these requests within 90 days of receipt, but may request additional information from the provider. If the IDC determines that the proposal would not materially affect the

⁸ As noted in paragraph 22 of this Distribution Plan, the amount of a single distribution to the shareholder of record may differ from the amount that would be distributed to underlying shareholders if information regarding the underlying shareholders were known.

distribution of funds to the ultimate shareholders, the proposal will be accepted.

Otherwise, the monies that would have otherwise been owed to the omnibus account will be added to the Undistributed Pool.

49. If an omnibus provider elects to carry out the distribution under paragraph 46.b of the Plan or is issued monies for distribution under paragraph 46.c of the Plan but fails to distribute the monies to the beneficial shareholders within the allotted time period, the Fund Administrator will notify the Commission, the omnibus provider will return the undistributed monies, and the undistributed monies will be added to the Undistributed Pool. Omnibus account providers will be required to certify that they have carried out the calculations in paragraph 46 and are prepared to make the distribution to the ultimate shareholders according to this Plan of Distribution prior to the distribution of monies to the omnibus account provider.
50. In many cases, omnibus shareholders of record have a fiduciary duty to beneficial owners. In all cases, omnibus shareholders of record will be encouraged to ensure that distributions reach individual beneficial owners in a timely manner. To that end, the Fund Administrator will keep a record of contacts with omnibus account providers, if any. These records will be provided to the staff of the Commission at least 45 days before the scheduled distribution is to be made.

F. Retirement Plans

51. "Retirement Plans" as used in this Plan means an employee benefit plan, as such plans are defined in section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account (IRA), whether or not the plan is subject to Title I of ERISA. Under this Plan, IRAs are treated as direct accounts or omnibus accounts, depending on whether the IRA is held directly with the Equity Funds or through an intermediary such as a broker/dealer. Distributions to omnibus IRAs will be made in accordance with Section VII.E. of this Plan.
52. Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Plan requires the plan fiduciaries and intermediaries, as defined in 13 Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006 (the "Field Assistance Bulletin"), of Retirement Plans to distribute the monies received in

accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including, but not limited to, the Field Assistance Bulletin.

53. An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Plan among eligible Retirement Plans participating in an omnibus account administered by such intermediary according to the procedures set forth in Section VII.E of this Plan or according to the average share or dollar balances of the Retirement Plans' investment in the Target, Growth, Opportunity, and Innovation Funds during the respective periods of timing activity (see paragraph 4, above), provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.
54. The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:
 - a. Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in the Appendix to this Plan. The IDC will make this methodology available to Retirement Plan fiduciaries.
 - b. Retirement Plan fiduciaries may allocate the distribution *pro rata* (based on total account balance) among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
 - c. Retirement Plan fiduciaries may allocate the distribution *per capita* among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees)
 - d. To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.

G. Disbursement Procedures

55. In order to distribute funds, the IDC will submit a redacted list of validated payees and the payment amounts to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1101(b)(6).
56. The payees and amounts will be validated at the IDC's direction by the Fund Administrator. The validation will state that the list was compiled in accordance with the Distribution Plan and provides all information necessary to make disbursement to each distributee.
57. Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the Fund Administrator based upon the validated list and representation by the Fund Administrator that the checks or electronic transfers will be issued within the next 5 business days.
58. After the Commission orders disbursement, the Commission staff will direct the Bureau of Public Debt to transfer into the QSF Account an amount that the IDC shall request to fund such distribution, and each such distribution (e.g., the mailing of checks) shall, if reasonably possible, be made within five business days of each such transfer.
59. The funds will be held in the escrow account until presentation of a check or wire. Upon presentation of a check, the appropriate amount of funds will be transferred to a controlled distribution account at Deutsche Bank.
60. A "positive pay file" will be used for clearing checks at Deutsche Bank and will be provided to Deutsche Bank separately from the physical checks themselves.¹⁰ The Deutsche Bank will clear only checks matching entries in the positive pay file and for the amount in the file. For wires, the Fund Administrator will provide Deutsche Bank with wire transfer instructions signed by both the IDC and an authorized representative of the Fund Administrator.

¹⁰ Under the positive pay system, the Fund Administrator will submit to Deutsche Bank a file listing all of the checks issued. Deutsche Bank will match the serial numbers and amounts of checks presented for payment against this file. Checks that don't match will be reported back to the Fund Administrator, who will instruct Deutsche Bank whether to accept or reject them.

H. The Undistributed Pool

61. Monies that are not distributable will be paid to the Equity Funds, or to their successors in the event of a merger, at the time they are determined to be undistributable. The Funds shall certify that the amounts received, if any, will be deposited into the Funds' asset base. The monies will be distributed to the Funds in such a way that would prevent an investor from predicting the next day's NAV, i.e., the timing of the distribution to the funds will not be announced in advance. The distribution of these amounts to the Funds will not be announced in advance to minimize the possibility of any market timing or other opportunities related to the Funds.

I. Oversight

62. While the Distribution Plan is being implemented, the Fund Administrator will file with the Commission an accounting, during the first ten days of each calendar quarter, of the immediately-preceding calendar quarter, and will submit a final accounting for approval by the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

63. The IDC and the Fund Administrator, and/or each of their designees, agents and assigns, shall be entitled to rely on any Orders issued in this proceeding by the Commission, its Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person other than the Commission or the Fair Fund for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Distribution Plan. This paragraph is an expression of the IDC's and the Fund Administrator's standard of care and is not intended, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator or their designees, agents and assigns by the Commission or the Fair Fund, nor should this paragraph preclude the Commission or the Fair Fund from seeking redress from the IDC or the Fund Administrator in accordance with the rules and regulations of the Commission.

VIII. Tax Implications of the Distribution

64. The Commission has appointed Damasco & Associates as the Tax Administrator (“Tax Administrator”) of the Fair Fund. *See Order Directing Appointment of Tax Administrator*, Admin. Proc. File No. 3-11726, Securities Exchange Act Release No. 51341 (March 9, 2005). The IDC, Fund Administrator and Respondents will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by Respondents.
65. The Fund Administrator shall authorize Deutsche Bank to provide account information to the Tax Administrator. The Fund Administrator shall use the assets and earnings of the Fair Fund to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs.
66. This Plan of Distribution does not provide tax advice to parties receiving payments. Eligible shareholders are advised to consult their own tax advisors. The IRS has provided guidance on the tax status of distributions, which can be found at <http://www.irs.gov/pub/irs-wd/0702006.pdf>.

IX. Termination of the Fair Fund

67. Prior to the termination of the Fair Fund, the IDC shall cooperate with the Tax Administrator to make adequate reserves for tax liability and for the costs of tax compliance. Upon termination, as defined in this paragraph, all undistributed assets remaining in the Fair Fund, minus any reserves for tax liability and tax compliance costs shall be distributed to the Growth, Opportunity and Target Funds, and to the Allianz RCM Global Technology Fund, which is the successor to the Innovation Fund, in accordance with the procedures outlined in paragraph 61, and in proportion to the harm to shareholders in each Fund.
68. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Fair Fund has

been received by the Commission. When the Commission has approved the final accounting, the staff shall arrange for the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and shall seek an order from the Commission to terminate the Fair Fund and discharge the Fund Administrator.

69. Except for tax liabilities, which shall be paid according to Rule 1105(e) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. § 201.1105(e), Respondents will pay all fees and costs associated with the administration of the Distribution Plan, including the fees of the Fund Administrator.
70. Subject to paragraph 68, the distribution will be completed as soon as commercially reasonable after the final approval of this Distribution Plan.

X. Disputes

71. There will be a limited written dispute process, which will be described on the website. Disputes will be accepted only for mechanical errors in determining eligibility or calculating the payment to a recipient. Disputes are to be submitted in writing to the dispute arbiter, Analysis Group, Inc., within 240 days of the final approval of the Distribution Plan by the Commission. The dispute arbiter will resolve all disputes within 270 days of final approval of the Distribution Plan. Monies to fund successful disputes will be taken from the Undistributed Pool. The dispute arbiter will be paid by Respondents.

Appendix

Methodology for Calculating Shareholder Harm

I. Framework for the Analysis

1. The purpose of this analysis is to estimate harm to long-term shareholders that they may have suffered as a result of the market timing activities discussed in the SEC Order. To estimate harm to shareholders, three possible but-for worlds were initially considered: (1) a but-for world in which the timer would not have been present; (2) a but-for world in which timer would be present, but would pay a fair price when entering or leaving the fund, with the ‘fair’ price measured as either a ‘fair’ NAV for the timer given the information the timer used in making its decision at the time or the next-day NAV; and (3) a but-for world in which the timer simply disgorges its profits.
2. Greene and Ciccotello (2004)¹ have shown that neither the second but-for world (fair NAV), nor the third (disgorgement of profits) guarantee that the shareholders will be adequately compensated for the harm they have actually suffered as a result of the timing activity.
3. Shareholders of mutual funds in which timing activity takes place are diluted to the extent that the actual returns they earn are less than the returns they would have earned had the timing activity not occurred. Timer activity may adversely affect the returns to non-timer shareholders if it (1) disrupts the investment style of the fund (“style drift”); and/or (2) generates non-optimal cash balances, therefore causing cash drag; and/or (3) causes the fund to incur additional transaction costs in response to the timing activity.
4. The extent to which Canary’s timing activities adversely affected the returns to non-timer shareholders is estimated in Section II below by analyzing the behavior of each Fund’s tracking error over the period when the timing activity occurred. The analysis of tracking error indicates no statistical change in investment style and only modest disturbance caused by the cash positions of the funds as a consequence of timer activity. The general methodology for calculating dilution is described in Section III; this methodology

requires a measure of the extent of cash disruption, described in Section IV. The application of the model to estimate dilution is described in Section V.

5. The methodology described can be viewed as an extension of Greene and Ciccotello (2004), with two features added. First, the necessary condition of disruption of the funds' tracking error is verified. And second, an empirical methodology to estimate cash imbalances resulting from timing activities is developed.

II. Portfolio Style versus Cash Position Disruption

6. The behavior of tracking error is analyzed to determine whether there is statistical evidence of any perturbation that can be attributed to any style change or excess cash caused by the timer. If there is no statistical evidence that the activity disrupted the portfolio manager's ("PM") investment style, disruption to tracking error, if any, is assumed to result from non-optimal levels of cash caused by the timer activity.
7. To examine whether the timer activity disrupted portfolio style and/or the Funds' cash positions, a model of mutual fund returns is estimated using the return on each Fund's best-fit index.² The implicit assumption behind this formulation is that the factor-loadings represent the manager's style in a risk-return setting. For a period of time before the timing activities begin (75 trading days), the model estimates:

$$R_{pt} = \alpha^b + \beta_1^b R_{bt} + \varepsilon_t \quad (1)$$

where R_{pt} is the mutual fund return, R_{bt} is the return on the best-fit index, and the superscript b indicates the time period before the start of timing activity.

¹ Greene, Jason T. and Conrad S. Ciccotello, "Mutual Fund Dilution from Market Timing Trades," *Journal of Investment Management*, v. 4, no. 1, 2006, pp. 1-24.

² The best-fit index is determined by Morningstar. Morningstar regresses a fund's monthly excess returns against the monthly excess returns of several well-known market indexes. Best fit signifies the index that provides the highest R-squared when the fund is regressed against it. For the Growth Fund, the best-fit index is the Russell 1000 Growth; for the Target Fund, the best-fit index is the Russell Mid-cap Growth; and for the Opportunity Fund, the best-fit index is the Russell 2000 Growth. The best-fit index for the Innovation Fund is PSE Tech Growth, but since there is only one round trip in this fund, one cannot estimate a meaningful relationship; losses for the Innovation Fund are calculated based on the parameters for the Growth Fund.

8. Then, the observed fund returns during the period of timing are used to estimate a more general form of equation (1):

$$R_{pt} = (1-c)(\alpha^a + \beta_1^a R_{bt}) + cR_{t-1} + (1-c)\varepsilon_t \quad (2)$$

where R_{t-1} is the interest rate on cash, c is the amount of excess cash as a percentage of total assets in the fund, and the superscript a indicates the time period when the timer is active. The following hypotheses are then tested: $H_0 : c = 0$ and

$H_0 : \beta_1^b = \beta_1^a$ and $\alpha^b = \alpha^a$. Under this specification, c will provide an estimate of average excess cash during the timing period. If the hypothesis that $c = 0$ can be rejected, then one can infer that excess cash caused some disturbance to the portfolio. Similarly, if the hypothesis that $\beta_1^b = \beta_1^a$ and $\alpha^b = \alpha^a$ can be rejected, one can infer that the timing activity altered the portfolio style. Conversely; if $\beta_1^b = \beta_1^a$ and $\alpha^b = \alpha^a$ cannot be rejected, i.e., the portfolio beta and alpha did not significantly change during the timing period, then one can infer that the only disturbance to the portfolio is the presence of excess cash levels.

9. For the Growth Fund, the results of the estimation equation indicate that c is greater than zero, but is not statistically significant. If equation (2) is estimated constraining c to be equal to zero, the hypothesis that portfolio style changed during the timing period cannot be rejected, meaning that the hypothesis that excess levels of cash caused disturbances to the portfolio cannot be rejected. Failure to properly account for this cash disturbance could lead to a false conclusion that the portfolio style changed. Therefore, the slight disturbance is treated as caused by excess cash.
10. In the Opportunity Fund, there is no evidence of style change or cash disruption.
11. In the Target Fund, the hypothesis of style change cannot be rejected. However, c is positive, but not significant, indicating some possible level of cash disturbance. Rejecting the hypothesis of “no style change” may be due to the fact that the pre-timer period includes observations shortly after the events of 9/11. If the 75-day period

following the timer activity is used instead, there is again no evidence of a style change during the timing period; c continues to be positive, but not significant.

12. Based on the foregoing, the IDC concludes that, to the extent there is any disruption, it is due to excess cash.

III. Methodology for Estimation of Dilution

13. The analysis above indicates that portfolio performance is adversely, though moderately, affected by the excess cash caused by the timer activity. Dilution to fund shareholders can be computed directly from a measure of cash disruption. Note, however, that excess levels of cash held in the fund which are attributable to timer activity may either harm or benefit other shareholders depending on the period return on invested assets. That is, timer-related perturbations in tracking error can either be positive (adding to returns) or negative (reducing returns). Dilution is defined as negative perturbations to tracking error caused by the timer.

14. Dilution resulting from a timer round trip starting at time $t=0$ can be expressed as:

$$\prod_{t=0}^{T+N} (1 + r_t^*) NA_0 - \prod_{t=0}^{T+N} (1 + r_t) NA_0 \quad (3)$$

where T is the duration of the roundtrip and N is the duration (number of days) of cash disturbance after the end of the roundtrip. Equation (3) states that dilution is equal to the difference between the return shareholders would have received in the absence of the timer (the “but-for return”) and the actual return on the fund, applied to the fund’s net assets at the beginning of the timer’s round trip. The period $T+N$ for calculating dilution is defined as the period during which the round trip disrupts returns.

15. Assuming, as warranted by the evidence that timing did not perturb fund style, that when the PM invests the timer cash, he invests that cash ‘in the portfolio,’³ i.e., that timer activities do not change the investment strategy, as shown above, the observed return on the fund can be written as:

³ Investing ‘in the portfolio’ implies that the portfolio manager holds ‘the normal’ level of cash.

$$r_t = \left(1 - \frac{C_{t-1}}{NA_{t-1}}\right) r_t^* + \frac{C_{t-1}}{NA_{t-1}} r_t^C \quad (4)$$

where r_t^C is the return on cash⁴ and C_{t-1} is the excess cash⁵ held because of the timer activity. If no excess cash is held, the but-for return will be equal to the actual portfolio return. The return on the normal level of cash is embedded in the portfolio's normal return. When excess cash is held, but no other disruption is caused to the portfolio, the observed return is a weighted average of the normal return (which is also the but-for return) and the return on cash. The but-for return can therefore be expressed as:

$$r_t^* = \frac{r_t - \frac{C_{t-1}}{NA_{t-1}} r_t^C}{1 - \frac{C_{t-1}}{NA_{t-1}}} \quad (5)$$

16. Equation (5) implies that the but-for return at time t is simply the actual return corrected for the excess cash from the timer the day before and for the return on that excess cash. The calculation of the but-for return in Equation (5) requires a measure of the relationship between timer activity and portfolio cash, described below.

IV. The Dynamics of Timing and Cash

17. Any disruption to portfolio performance caused by timer activity is most likely related to large cash imbalances. In order to calculate shareholder dilution, a model of the dynamics of cash in the fund before, during, and after a timer roundtrip needs to be developed that will provide an estimate of the magnitude of those cash imbalances.

a. Model

18. The following models are estimated using end-of-day cash:

$$\frac{Cash}{NetAssets_{f,t}} = \alpha + \sum_{i=1}^5 \beta_i \frac{Cash}{NetAssets_{f,t-i}} + \sum_{j=0}^5 \gamma_j \frac{TimerFlow}{NetAssets_{f,t-j}} \quad (6)$$

⁴ For the return on cash, the daily overnight repurchase rate is used, as reported in the data received from Respondents.

⁵ Excess cash is defined as the departure from the optimal cash position caused by the timer activity.

19. This model allows one to measure how timing activity causes a divergence of portfolio cash holdings from optimal cash holdings. The γ 's measure the extent to which cash brought in by the timer directly affects the fund's cash balance – this impact can last up to five days. The β 's can be interpreted as measuring the decay rate, or the speed of adjustment to any cash imbalance.
20. For example, when the timer enters the portfolio, a positive value is recorded for the *TimerFlow* variable. When the timer leaves the portfolio, a negative value is recorded for that same variable. To the extent that these flows systematically disturb the cash position of the portfolio, the estimated γ 's will be positive and significant. Note also that if the γ 's are positive and significant, the timer's entry will affect the portfolio's cash balance. This will create a cash imbalance over time which is reflected in the β 's.
21. This specification of cash and timer flows was chosen for several reasons. First, the number of lags chosen (five) is appropriate since lag structures longer than five do not improve the explanatory power of the model. Second, non-timer flows do not have any significant impact on fund cash positions and therefore have been excluded from the regression. Third, the use of more complex error terms structures (such as GARCH) does not significantly improve the explanatory power of the model.

b. Results

22. For the Growth Fund, the estimation shows that the cash adjustment to inflows and outflows took about three days (lags longer than three days for both lagged cash and inflows are insignificant). The model could not be estimated for the Innovation Fund because there was only one round trip in this fund. To calculate dilution, if any, for the Innovation Fund, the parameters estimated for the Growth Fund were used.
23. Results for the Target Fund indicate that the cash adjustment might have been slightly slower (lag four coefficients being marginally significant in some instances). The Opportunity Fund appears to have had a much faster cash adjustment process. No lagged variable for flows is significant beyond lag two.

V. Use of the Model to Estimate Dilution

a. Accounting Considerations

24. Although the logic behind equation (5) is quite simple, some adjustments to the equation must be made to account for fund accounting rules.

- On day 1 of a round trip, timer cash must be included as uninvested cash and added to the fund's net assets, as it does not appear in the fund's accounting at day 0.
- On day 2 of the trip, the timer cash, which appears now as a receivable, must be included as uninvested cash.
- To calculate the but-for return on T+1 (the day after the timer exits), the cash payable to the timer must be subtracted from uninvested cash on day T and from the fund's net assets on day T.

b. Measuring Excess Cash

25. Uninvested, or excess, cash is measured as the departure from the steady-state cash position caused by timer activity, as described in equation (6) above. Assuming that the dynamics of investment by the PM when timing occurs are always the same, dilution can be measured by substituting into equation (3) the but-for return determined by equation (5) incorporating the excess cash as measured using the cash dynamics model in Section B.IV.

c. Correction for Transaction Costs

26. Investment of some of the timer money by the PM also results in excess transaction costs – both when purchasing the securities and when selling them to fund the timer's redemption. Some of the transaction costs of purchasing securities are actually borne by the timer, but all of the transaction costs of selling the securities are borne exclusively by the other shareholders.

27. Transaction costs can be estimated as:

$$f \frac{NA_0 - T_0}{NA_0} (C^{SS} - C_{T+1}) \tag{7}$$

for securities purchases, and:

$$f (C^{SS} - C_{T+1}) \tag{8}$$

for securities sales.

T_0 is the total amount of money brought in by the timer; f is the transaction fee for each dollar purchase or sale of securities;⁶ C^{SS} is the steady-state level of cash;⁷ and C_{T+1} is the predicted level of cash after the timer's money has left the portfolio.

28. Transaction costs are assessed by looking at the dip in cash following the timer's departure. The share of the timer's money actually invested in securities by the PM is approximated as $C^{SS}-C_{T+1}$. This methodology has the advantage of accounting for all the timer's cash activities over the trip.⁸
29. When the timer enters, the amount of cash in the fund is at its steady-state level, and if the PM does not invest any of the timer's cash, cash during the round trip should never fall below the steady-state level. If cash does fall below the steady-state level, this means that the PM does not have enough cash to meet the redemption of the timer.
30. Appendix Exhibit 1 provides summary statistics for the market timer's activity in the Funds. Appendix Exhibit 2 shows the distribution of roundtrips by number of days.

⁶ The transaction fee used in the calculation is 25 basis points per dollar traded.

⁷ C^{SS} is defined as $a/(1-\sum\beta_i)$; see Equation (6).

⁸ Some roundtrips are complex in that the timer cash may enter and/or exit the fund in two or more transactions.

Appendix Exhibit 1
Descriptive Statistics for Subscriptions and Redemptions (inclusive of Exchanges)

	Growth	Target	Opportunity	Innovation	Total
Timer Descriptive Statistics:					
Date of First Trade	11-Apr-02	8-Feb-02	11-Apr-02	8-Feb-02	8-Feb-02
Date of Last Trade	21-Nov-02	21-Nov-02	3-Apr-03	21-Feb-02	3-Apr-03
Number of Subscriptions	31	46	45	1	123
Number of Redemptions	35	53	46	2	136
Value of Subscriptions	\$ 886,964,213	\$ 1,185,888,663	\$ 185,899,886	\$ 23,857,947	\$ 2,282,610,710
Value of Redemptions	887,945,282	1,184,319,679	185,537,368	22,694,419	2,280,496,747
Average Size of Subscription	28,611,749	25,780,188	4,131,109	23,857,947	18,557,811
Holding Period Profit	981,069	(1,568,985)	(362,518)	(1,163,529)	(2,113,963)
Non-Timer Descriptive Statistics:					
Value of Subscriptions During Timing Period	\$ 46,608,895	\$ 118,224,066	\$ 76,359,982	\$ 11,962,438	\$ 253,155,380
Value of Redemptions During Timing Period	201,396,701	306,051,095	117,800,397	23,372,878	648,621,071
Net Non-timer Flow	(154,787,806)	(187,827,030)	(41,440,415)	(11,410,440)	(395,465,691)
Average Daily Subscription	208,075	413,371	213,894	920,188	604,189
Average Daily Redemption	899,092	1,070,109	329,973	1,797,914	1,548,022
Total Dilution to Diluted Shareholders [1]	\$ 1,682,329	\$ 79,999	\$ 99,086	\$ 1,866	\$ 1,863,281

Note: [1] These numbers reflect dilution only to those shareholders who suffered dilution with no offset for shareholders who had negative dilution.

Appendix Exhibit 2
Distribution of Number of Holding Period Days
Timer Transactions
Growth, Innovation, Opportunity, and Target Funds

