

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18909

In the Matter of

Fifth Street Management, LLC

Respondent.

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PROPOSED PLAN OF DISTRIBUTION

Introduction

This proposed Plan of Distribution (the “Plan”) has been developed pursuant to Rule 1101 of the Securities and Exchange Commission’s (“Commission”) Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan provides for a distribution of the funds collected in the above-referenced proceeding from Fifth Street Management, LLC (“Fifth Street”) to compensate Fifth Street’s former business development company (“BDC”) clients for the misallocation of expenses in 2013 and 2014.

Background

1. On December 3, 2018, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)¹ against Fifth Street. The Commission determined, in relevant part, that, in 2013 and 2014, Fifth Street improperly allocated to Fifth Street’s former BDC clients -- Fifth Street Finance Corp. (“FSC”) and Fifth Street Senior Floating Rate Corp. (“FSFR”) (collectively, the “BDC Clients”) -- rent and other overhead expenses, and certain compensation expenses that Fifth Street should have paid. The Commission ordered Fifth Street to pay disgorgement of \$1,999,115.86, prejudgment interest of \$334,545.65, and a civil money penalty of \$1,650,000, and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the ordered monetary relief (the “Fair Fund”). Fifth Street has since paid in full, and the Fair Fund currently holds approximately \$4 million, comprised of disgorgement, prejudgment interest, civil money penalty, and accrued interest.

¹ Securities Act Rel. No. 10581 (Dec. 3, 2018).

2. The Fair Fund is deposited in an interest-bearing account at the United States Treasury Department's ("Treasury") Bureau of the Fiscal Service ("BFS"). All BFS fees will be paid by the Fair Fund in accordance with ¶ 60. Any additional funds timely received will be added to the Fair Fund for disbursement to Eligible Claimants (defined below) pursuant to the Plan. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over implementation of the Plan.

Fund Administrator

3. The Commission has appointed Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Fund Administrator (the "Fund Administrator").² Pursuant to Rule 1105(a) of the Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

4. The Fund Administrator has obtained a bond in the manner prescribed by Rule 1105(c) of the Rules in the amount of \$3,983,661.51. The bond premium will be paid from the Fair Fund in accordance with ¶ 60.

5. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants (defined below); obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator (defined below) to ensure compliance with tax laws, rules, and regulations; advising Potential Claimants of claim deficiencies and providing an opportunity to cure any documentary defects; as necessary, determining and complying with foreign jurisdictional requirements in implementing the plan; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria in the Plan as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Fair Fund in accordance with the Plan. The Fund Administrator may be removed at any time by order of the Commission or hearing officer.

6. All reasonable fees and expenses of the Fund Administrator will be paid by the Fair Fund in accordance with ¶ 60. The Fund Administrator shall submit an invoice quarterly for completed services to the Commission staff for filing with the Commission; upon approval of an application by the Commission, the Fund Administrator will be paid its reasonable fees and expenses for those services.

² Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 85684 (Apr. 18, 2019).

Tax Administrator

7. The Commission has appointed Miller Kaplan Arase LLP as the Tax Administrator for the Fair Fund (the “Tax Administrator”).³ The Tax Administrator is required to administer the Fair Fund as 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. The Tax Administrator is responsible for, among other things, all income tax related reporting requirements including the preparation and filing of tax returns, and compliance with the Foreign Account Tax Compliance Act.

8. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its 2019-2021 Engagement Letter Agreement with the Commission. All taxes will be paid by the Fair Fund in accordance with ¶ 60.

Definitions

9. As used in the Plan, the following definitions apply:
- (a) *Administrative Costs.* All costs of administering the Fair Fund, including taxes, fees, and expenses of tax and fund administration, bond costs, and all investment costs.
 - (b) *BDC Clients.* Fifth Street Finance Corp. and Fifth Street Senior Floating Rate Corp.
 - (c) *Claim Deadline.* The date by which a Claim Form must be postmarked or, if not sent by U.S. Mail, received by the Fund Administrator to avoid the barring of any rights of a Potential Claimant to participate in the distribution of the Fair Fund. The Claim Deadline shall be ninety (90) days after mailing of the Plan Packet. Claim Forms postmarked or, if not sent by U.S. Mail, received after the Claim Deadline will *not* be reviewed and evaluated.
 - (d) *Claim Form.* The form designed by the Fund Administrator and approved by Commission staff, for the filing of claims in accordance with the Plan. The Claim Form will require, at a minimum, sufficient documentation of transactions in the Investment such that eligibility under the Plan can be determined, tax identification and related information from the Potential Claimant as determined necessary by the Fund Administrator in coordination with the Tax Administrator, and a certification that the Potential Claimant is not an Excluded Party. Claim Forms will be included in the Claims Packet mailed by the Fund Administrator to identified Potential Claimants, and will be available on the Fair Fund’s website described below, ¶ 13(d). Potential Claimants may also request a Claim Form from the Fund Administrator via

³ Order Appointing Tax Administrator, Exchange Act Rel. No. 85742 (Apr. 29, 2019).

mail, email, or by calling the toll-free number established for the Fair Fund, all of which contact information will be set forth on the Fair Fund's website.

- (e) *Claims Packet.* The materials relevant to submitting a claim that may be provided to identified Potential Claimants, including Potential Claimants who request such materials through the Fair Fund's website or otherwise. The Claims Packet will include, at minimum, a copy of the Plan Notice and a Claim Form (together with instructions for completing the Claim Form).
- (f) *Deficiency Notice.* The notice sent by the Fund Administrator via United States First Class Mail to all Potential Claimants whose claims are deficient in one or more ways (e.g., failure to provide required information or documentation). The Deficiency Notice will advise the Potential Claimant of the reason(s) for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. The Deficiency Notice shall be sent within sixty (60) days of the Claim Deadline. The deadline to cure deficiencies shall be thirty (30) days from the date of the Deficiency Notice.
- (g) *Determination Notice.* The notice, sent by the Fund Administrator by United States First Class Mail to each Potential Claimant who submitted a Claim Form, setting forth the Fund Administrator's conclusion concerning eligibility of such claim. In the event the claim is denied, the Determination Notice will state the reason(s) for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim. The Determination Notice shall be mailed within one hundred fifty (150) days of the Claim Deadline.
- (h) *Distribution Methodology.* The methodology used to determine eligibility for a distribution under the Plan and to calculate an Eligible Claimant's Distribution Payment as set forth at ¶¶ 31-37.
- (i) *Distribution Payment.* A payment to an Eligible Claimant in accordance with the Plan.
- (j) *Eligible Claimant.* A Potential Claimant who is not an Excluded Party and who is determined by the Fund Administrator to be eligible under the Plan for a Distribution Payment.
- (k) *Excluded Parties.* Excluded Parties include the Respondent, its affiliates, assigns, subsidiaries, successors-in-interest, and any firm, trust, corporation, or other entity in which Respondent has or had a controlling interest during the Investment Period; and the Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as Fund Administrator. The Claim Form will require all Potential Claimants to certify that they are not an Excluded Party.

- (l) *Investment*: Investment in the common stock of the BDC Clients during the Investment Period.
- (m) *Investment Period*. April 1, 2013 through December 31, 2014, inclusive, for investment(s) in Fifth Street Finance Corp. and September 1, 2013 through December 31, 2014, inclusive, for investment(s) in Fifth Street Senior Floating Rate Corp.
- (n) *Minimum Distribution Amount*. The specified dollar amount that a Distribution Payment must equal or exceed in order for a distribution to be made to an Eligible Claimant. The Minimum Distribution Amount shall be \$10.00.
- (o) *Net Fair Fund*. The assets of the Fair Fund, including investment income, less amounts expended or reserved for Administrative Costs in accordance with the Plan.
- (p) *Plan Notice*. A written notice from the Fund Administrator to Potential Claimants informing them of the Plan and its eligibility requirements, explaining how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund's website, and explaining how to submit a claim.
- (q) *Potential Claimants*. Individuals and entities, or their lawful successors or assigns, who held the Investment during the Investment Period.
- (r) *Summary Notice*. The notice published in print or internet media pursuant to ¶ 13(h) below. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Claim Deadline.

Identification and Notification to Potential Claimants

12. The Fund Administrator, as practicable, will use its best efforts to identify Potential Claimants from a review of trading records and account information provided by the transfer agent for the BDC Clients, registered broker dealers, and any other sources available to it.

13. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator shall:

- (a) create a mailing and claim database of all Potential Claimants based upon information obtained by the Fund Administrator;

- (b) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring updated mailing information for Potential Claimants;
- (c) mail a Claims Packet to each Potential Claimant identified by the Fund Administrator;
- (d) establish and maintain a website dedicated to the Fair Fund. The Fair Fund's website, located at www.FifthStreetFairFund.com, will make available a copy of the Claims Packet, the approved Plan, provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions, and provide such other information that the Fund Administrator believes will be beneficial to Potential Claimants;
- (e) provide a copy of the approved Plan and Claims Packet to the Commission staff and request that the Commission staff establish a link to the Fair Fund's website on the Commission webpage dedicated to this administrative proceeding, located at <https://www.sec.gov/divisions/enforce/claims/fifth-street-management.htm>;
- (f) establish and maintain a traditional mailing address and an email mailing address, which will be listed on all correspondence from the Fund Administrator and posted on the Fair Fund's website;
- (g) establish and maintain a toll-free telephone number for Potential Claimants to call to speak to a representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The Fund Administrator will advise the Commission staff of the toll-free number, post the number on the Fair Fund's website, and include the number on all correspondence; and
- (h) publish a copy of a Summary Notice, approved by Commission staff, in a manner and through media deemed appropriate by the Fund Administrator and acceptable to the Commission staff.

14. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website and any scripts used in connection with communications with Potential Claimants.

15. The Fund Administrator will promptly provide a Claims Packet to any Potential Claimant upon request made prior to the Claim Deadline.

16. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator shall mail Plan Packets to the Fund Administrator's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process that may have records of investors in the BDC Clients and holdings at relevant times. The Fund

Administrator will request that these entities, to the extent that they were record holders for beneficial owners of the Investment:

- (a) Notify the respective beneficial owners of receipt of the Claims Packet within fourteen (14) days of receipt of the Claims Packet so that beneficial owners may timely file a claim; and/or
- (b) Provide to the Fund Administrator within fourteen (14) days of receipt of the Claims Packet a list of last known names and addresses for all beneficial owners for whom the record holders purchased the Investment so that the Fund Administrator can communicate with them directly.

17. The Fund Administrator will attempt to locate any Potential Claimant whose mailing is returned as undeliverable by the U.S. Postal Service, including an advanced address search, if and as feasible, and will document all such efforts. The Fund Administrator shall immediately re-mail any returned undeliverable mail for which the U.S. Postal Service has provided a forwarding address. Additional efforts by the Fund Administrator to identify new addresses for returned undeliverable mail will be conducted as necessary and economically reasonable after consultation with the Commission staff. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for persons who mailing is returned as undeliverable; all such costs shall be paid by the Fair Fund in accordance with ¶ 60.

18. Once contacted by the Fund Administrator, Potential Claimants have the burden of notifying the Fund Administrator of any change in their address and other contact information, and of ensuring that such information is properly reflected in the Fund Administrator's records.

Claims Process

19. In all materials that refer to the Claim Deadline, the Claim Deadline will be clearly identified as within ninety (90) days of mailing of the Claims Packet. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Fund Administrator a properly completed Claim Form that is postmarked or, if not sent by U.S. mail, received on or before the Claim Deadline. The burden will be on the Potential Claimant to ensure that their Claim Form has been timely postmarked or, if not sent by U.S. Mail, received. A Claim Form that is postmarked or, if not sent by U.S. Mail, received after the Claim Deadline will not be accepted unless the deadline is extended by the Fund Administrator after consultation with the Commission staff. Any extension will be published on the Fair Fund's website.

20. The burden to prove receipt of the claim by the Fund Administrator will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their Claim Forms in a manner that will enable them to prove timely receipt of the Claim Form by the Fund Administrator.

21. Claim Forms must be properly filled out per the instructions provided by the Fund Administrator, and must be accompanied by such documentary evidence as the Fund

Administrator deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third-party documentary evidence of purchases and dispositions of the Investment, as well as holdings of the Investment, at relevant dates.

22. All claims and supporting documentation necessary to determine a Potential Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be supported by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant, unless the Fund Administrator accepts such declaration from someone authorized to act on the Potential Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems appropriate.

23. The Fund Administrator will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing claim data and supporting documentation (or lack thereof), verifying the claim, and calculating each Potential Claimant's loss pursuant to the Plan. Each Potential Claimant will have the burden of proof to establish the validity and amount of his or her claim, and that they qualify as an Eligible Claimant, including the burden to certify that they are not an Excluded Party. The Fund Administrator will have the right to request, and the Potential Claimant will have the burden to promptly provide to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator. Any additional information supplied to the Fund Administrator must be postmarked or, if not sent by U.S. Mail, received no later than the deadline set for responses to a Deficiency Notice.

24. Potential Claimants will be able to contact the Fund Administrator via the toll-free telephone number, an email address, or using traditional mail to request copies of the Claim Form, ask questions about how to complete and file the Claim Form, and inquire about their claim.

25. Within sixty (60) days of the Claim Deadline, the Fund Administrator will send a Deficiency Notice to each Potential Claimant that submitted a Claim Form whose claim is deficient. Any Potential Claimant with a deficient claim will have thirty (30) days from the date of the Deficiency Notice to cure any deficiencies identified in the Deficiency Notice; any submission postmarked or, if not sent by U.S. Mail, received more than thirty (30) days from the date of the Deficiency Notice will not be accepted.

26. Within one hundred fifty (150) days of the Claim Deadline, the Fund Administrator will send a Determination Notice to all Potential Claimants who submitted a Claim Form. The Fund Administrator will consult with the Commission staff regarding claim rejections before the issuance of Determination Notices. Any Potential Claimant seeking reconsideration of a denial of claim must send a request for reconsideration ("Request for Reconsideration") to the Fund Administrator in writing within thirty (30) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim. Any Request for Reconsideration postmarked or, if not sent by

U.S. Mail, received more than thirty (30) days from the date of the Determination Notice will not be accepted.

27. The Fund Administrator may, in its sole discretion, consider Requests for Reconsideration presented by Potential Claimants, and will consult Commission staff as appropriate. The Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim, unless the Potential Claimant is notified in writing that the determination has been revised in response to the Request for Reconsideration. Any such notice of reconsideration shall be sent by the Fund Administrator within sixty (60) days of the date of the Determination Notice.

28. The Fund Administrator will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case by case basis, or in groups of claims. All determinations made by the Fund Administrator in accordance with the Plan will be final and not subject to appeal.

29. The recipient of an Investment as a gift, inheritance, devise, or operation of law will participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted with regard to the same Investment, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored if it is supported by proper documentation.

30. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Fund Administrator will distribute any payments on such claims directly to the administrator, custodian, or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

Distribution Methodology

31. This methodology is designed to compensate Eligible Claimants for the Respondent's misallocation of expenses during the Investment Period. The amount to be distributed to each Eligible Claimant will be determined as described in the following paragraphs. In the view of the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Net Fair Fund.

32. For each of FSC and FSFR, the Fund Administrator will determine, by calendar quarter during the Investment Period:

- (a) the total amount of misallocated expenses plus prejudgment interest attributable to that quarter ("Quarterly Loss"); and
- (b) the per share allocation of the Quarterly Loss as the Quarterly Loss divided by shares outstanding at the end of the quarter ("Per Share Allocation").

33. For each Potential Claimant, the Fund Administrator will determine, for each of FSC and FSCR:

- (a) the number of shares held at the end of each calendar quarter during the Investment Period (“Potential Claimant’s Quarterly Holding”); and
- (b) the Potential Claimant’s “Quarterly Recognized Loss” as the product of the Potential Claimant’s Quarterly Holding and the Per Share Allocation.

34. For each Potential Claimant, the Fund Administrator will calculate the Potential Claimant’s “Eligible Loss Amount” as the sum of the Potential Claimant’s Quarterly Recognized Losses in FSC and FSFR during the Investment Period.

35. If the Net Fair Fund has sufficient funds, and subject to ¶¶ 36-37, each Eligible Claimant will receive a Distribution Payment equal to the amount of their Eligible Loss Amount. If the Net Fair Fund is not sufficient to fully pay the Eligible Loss Amount for all Eligible Claimants, then each Eligible Claimant will receive a Distribution Payment that their Eligible Loss Amount bears in proportion to the sum of Eligible Loss Amounts of all Eligible Claimants.

36. If the Net Fair Fund has funds in excess of that necessary to pay each Eligible Claimant a Distribution Payment equal to the amount of their Eligible Loss Amount, the Fund Administrator, in consultation with the Commission staff, may include reasonable interest.⁴

37. If a Potential Claimant’s Distribution Payment is less than the Minimum Distribution Amount, the Potential Claimant will be determined to be ineligible and will not receive a Distribution Payment, and the calculated Distribution Payment will remain in the Net Fair Fund for distribution in accordance with the Plan.

⁴ “Reasonable Interest” will be calculated using the short-term Applicable Federal Rate, compounded quarterly from the end of each calendar year in which excess fees were paid through the approximate date of the disbursement of the Fair Fund.

Establishment of Escrow Account

38. The Fund Administrator will establish an escrow account (the “Escrow Account”) at a United States commercial bank (the “Bank”) that is acceptable to the Commission staff. The Escrow Account shall be established pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the Commission staff, in the name of and bearing the Employer Identification Number (“EIN”) of the QSF as described above. The Fund Administrator shall also establish with the Bank a separate deposit account (the “Deposit Account”) (e.g., controlled distribution account, managed distribution account, linked checking account or investment account) for the purpose of funding distribution payments to be distributed to Eligible Claimants by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: Fifth Street Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *Fifth Street Management, LLC*, Admin. Proc. File No. 3-18909.

39. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term Treasury securities backed by the full-faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government. All interest earned will accrue for the benefit of the Fair Fund.

40. Upon transfer from the BFS, all funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Deposit Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

41. The Fund Administrator shall deposit or invest the Fair Fund monies in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments. In consultation with the Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of the Net Fair Fund monies between the Escrow and Deposit Accounts.

42. The Fund Administrator shall provide duplicate bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

Distribution of the Fair Fund

43. The Fund Administrator, in consultation with Commission staff and the Tax Administrator, shall determine the Net Fair Fund by retaining a prudent reserve to pay any Administrative Costs payable in connection with the Fair Fund, as well as a reasonable contingency for potential unforeseen issues.

44. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of the Plan.

45. The Fund Administrator shall distribute the Net Fair Fund to all Eligible Claimants only after all timely submitted Claim Forms have been processed and all Potential Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth above, and after a Commission Order to Disburse has issued.

46. Within ninety (90) days of sending the Determination Notice described in ¶ 26, the Fund Administrator shall prepare a final payment file (“Payment File”) that includes the names, addresses, Eligible Loss Amount, and Distribution Payment of Eligible Claimants.

47. The Fund Administrator will also provide a “Reasonable Assurances Letter” as to the completeness and accuracy of the Payment File.

48. Upon receipt and review of the Payment File and Reasonable Assurances Letter, the Commission staff will obtain authorization from the Commission to disburse the Fair Fund consistent with Rule 1101(b)(6) of the Rules, 17 C.F.R. § 201.1101(b)(6). Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds from the Fair Fund to the Escrow Account. The Fund Administrator shall then use its best efforts to commence mailing checks or effect wire transfers within twenty-one (21) business days of the release of the funds into the Escrow Account (the “Initial Issue”). All efforts will be coordinated to limit the time between the Escrow Account’s receipt of the funds and the issuance of Distribution Payments.

49. All payments will be issued by the Fund Administrator from the Deposit Account. Subject to ¶ 53, all checks will bear a stale date of one hundred twenty (120) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. Except as otherwise provided in the Plan, an Eligible Claimant’s claim shall be extinguished if they fail to negotiate their check by the stale date. All such funds will remain in the Net Fair Fund.

50. All Distribution Payments shall be preceded or accompanied by a communication that will include, as appropriate: (a) a statement characterizing the distribution; (b) a statement from the Tax Administrator regarding the tax consequences of Distribution Payments and informing Eligible Claimants that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult their tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after one hundred twenty

(120) days; and (d) providing contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. All such communications shall be submitted to the Commission staff and the Tax Administrator for review and approval. Distribution Payment checks, on their face or the accompanying mailbag, shall clearly indicate that the money is being distributed from a Fair Fund established by the Commission for the benefit of investors for harm as a result of securities law violations.

51. Electronic or wire transfers may be utilized at the discretion of the Fund Administrator for good cause shown, including without limitation, to make Distribution Payments to Eligible Claimants who are unable to receive payment by check, or to transfer approved Distribution Payments on behalf of twenty (20) or more Eligible Claimants. Wire transfers will be initiated by the Fund Administrator using a two-party check and balance system, whereby completion of a wire transfer will require authorization by two members of the Fund Administrator's senior staff.

Post Distribution: Returned and Uncashed Checks

52. The Fund Administrator will perform an advanced address search for checks that are returned as undeliverable, using the resources described above, ¶ 17, to the extent such search is feasible, and will reissue such checks so long as the new address is received, and the check reissued, within one hundred twenty (120) days of the Initial Issue. Furthermore, the Fund Administrator will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of Commission staff and will reissue such checks, if necessary, within one hundred twenty (120) days of the Initial Issue.

53. The Fund Administrator shall reissue checks to Eligible Claimants, upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after sixty (60) days from the issuance and no checks will be reissued more than one hundred twenty (120) days from the Initial Issue.

54. A residual within the Fair Fund will be established for any amounts remaining after all assets have been disbursed. The residual may include, among other things, funds reserved for future taxes and for post-distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds. If Eligible Claimants have not yet received a Distribution Payment equal to the amount of their Eligible Loss Amount plus reasonable interest ("Total Loss") and, in the estimation of the Fund Administrator, an additional distribution is feasible, undistributed funds in the residual account after payment of all Administrative Costs will be distributed to those Eligible Claimants that negotiated the checks issued in the immediately preceding distribution or that received electronic payments, up to the their respective Total Loss. If any funds remain in the residual account after completion of all distributions and the payment of all Administrative Costs under the Plan, the Fund Administrator shall remit the residual to the Commission for transfer to Treasury after the Commission approves the final fund accounting.

Accountings and Termination of the Fair Fund

55. Once the Fair Fund has been transferred from the BFS to the Bank, the Fund Administrator will provide an accounting to the Commission staff during the first ten (10) days after the end of each quarter in a format acceptable to the Commission staff. Each accounting shall detail all monies earned or received and all monies spent in connection with the administration of the Plan during the reporting period.

56. Upon completion of all distributions pursuant to the Plan, the Fund Administrator shall make arrangements for the payment of taxes and administration fees and expenses, transfer all remaining funds to the Commission, and submit to the Commission staff a final fund accounting for Commission approval on the standardized accounting form provided by the Commission staff. The Fund Administrator also shall submit a final report to the Commission staff summarizing the distribution, including disbursed amounts, returned or unnegotiated payments, outreach efforts and costs, final distribution statistics including statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

57. The Fund Administrator will shut down the toll-free number, website, and any electronic mail address established specifically for the administration of the Fair Fund upon the transfer of any remaining monies to the Commission.

58. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (a) a final fund accounting, in a Commission approved standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; (b) all taxes, fees and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission for transfer to Treasury. The Commission staff shall seek an order from the Commission, as appropriate, approving the final accounting, terminating the Fair Fund, canceling the Fund Administrator's bond, discharging the Fund Administrator, and transferring any amounts remaining in the Fair Fund, and any amounts returned to the Fair Fund in the future, to Treasury.

59. Once the Fair Fund has been terminated and remaining monies, if any, are transferred to the United States Treasury, no further claims will be allowed and no additional payments will be made whatsoever.

Miscellaneous

60. All Administrative Costs shall be paid by the Fair Fund, first from the interest earned, and if the interest is not sufficient, from the corpus of the Fair Fund.

61. When administering the Plan, the Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the secretary by delegated authority, or an Administrative Law Judge.

62. The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan. The Fund Administrator will inform Commission staff of any changes needed to this Plan. Upon approval by the Commission staff, the Fund Administrator may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Commission approval is required to amend the Plan prior to implementation of the change. For good cause shown, the Fund Administrator, upon consultation with the Commission staff, may extend any of the procedural deadlines herein.

63. The Fund Administrator will maintain all documents, including documents in any media, for six (6) years after approval of the final fund accounting. Pursuant to Commission staff direction, the Fund Administrator will either turn over to the Commission or destroy all documents six (6) years after the approval of the final fund accounting.

Notice and Comment Period

64. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (“Notice”) will be published on the Commission’s website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an email to rule-comments@sec.gov. Comments submitted by email or via the Commission’s website should include “Administrative Proceeding File Number 3-18909” in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.