

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20381**

---

<b>In the Matter of</b>	:	
	:	
<b>Securities America Advisors, Inc.</b>	:	<b>PROPOSED PLAN OF</b>
	:	<b>DISTRIBUTION</b>
	:	
<b>Respondent.</b>	:	
	:	

---

**I. OVERVIEW**

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”) comprised of civil money penalties paid by Securities America Advisors, Inc. (the “Respondent”) in the above-captioned matter.<sup>1</sup>

2. As described more specifically below, the Plan seeks to compensate investors who held advisory accounts at the Respondent during the period November 1, 2014 through March 31, 2018, inclusive (the “Relevant Period”) and who suffered a loss as a result of the misconduct described in the Order. Based on information obtained by the Commission staff during and after its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for losses suffered from the misappropriation of assets from advisory accounts held at the Respondent.

---

<sup>1</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Advisers Act Rel. No. 5762 (June 30, 2021) (the “Order”).

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

## II. BACKGROUND

6. On June 30, 2021, the Commission issued the Order instituting and simultaneously settling administrative and cease-and-desist proceedings against the Respondent. In the Order, the Commission found that, from November 2014 to March 2018, the Respondent failed to implement policies and procedures for the review of automatically generated surveillance alerts after client disbursements had occurred. The Respondent also failed to implement reasonably designed policies and procedures for reviewing client disbursement requests for possible misappropriation before the disbursements occurred. As a result of these failures, Hector May, the owner of an independent state-registered investment adviser whose clients participated in certain of the Respondent's advisory programs, misappropriated, without the Respondent's detection, approximately \$8 million from the Respondent's advisory accounts of certain of the Respondent's advisory clients. The Commission ordered the Respondent to pay a \$1,750,000 civil money penalty to the Commission. The Commission also created the Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid can be distributed to harmed investors.

7. The Respondent has paid in full. The Fair Fund has been deposited at the United States Department of the Treasury's Bureau of the Fiscal Service ("BFS") for investment, and any accrued interest will be for the benefit of the Fair Fund.

## III. DEFINITIONS

As used in this Plan, the following definitions will apply:

8. "**Administrative Costs**" shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

9. "**Distribution Payment**" means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

10. "**Eligible Claimant**" means a Preliminary Claimant who is determined to have suffered a Recognized Loss pursuant to the Plan of Allocation and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

11. "**Excluded Party**" shall mean: (a) the Respondent, and the Respondent's advisers, agents, nominees, assigns, heirs, or controlled entities; (b) Hector May, the defendant in *SEC v. Hector A. May, et al*, 18 Civ. 11668 (VB)(S.D.N.Y. December 27, 2019); *US v. Hector A.*

*May*, 18 CR 880 (VB) (S.D.N.Y.) (the “Criminal Action”), and his agents, nominees, assigns, heirs, spouse, parents, children, or controlled entities, including without limitation, Executive Compensation Planners, Inc. and its employees; and (c) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

12. “**Fair Fund**” means the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondent’s violations described in the Order.

13. “**Final Determination Notice**” means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Investment and Recovery notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 37, except for those whose Plan Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim.

14. “**Investment**” means the Preliminary Claimant’s out-of-pocket investment amount paid into an advisory account with the Respondent during the Relevant Period, exclusive of any interest, dividend, or paper profit.

15. “**Net Available Fair Fund**” means the Fair Fund, plus any interest or earnings, less Administrative Costs.

16. “**Payee**” means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who is determined to receive a Distribution Payment.

17. “**Person**” means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

18. “**Plan Notice**” means a written notice from the Fund Administrator to each Preliminary Claimant regarding the Commission’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission’s website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its calculated Investment and Recovery and instructions on how to dispute the same; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator as a resource for additional information or to contact with questions regarding the distribution.

19. **“Plan of Allocation”** means the methodology by which a Preliminary Claimant’s Recognized Loss is calculated. The Plan of Allocation is attached as Exhibit A.

20. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the Commission staff during and after its investigation, who held advisory accounts at the Respondent during the Relevant Period and who may have suffered losses as a result of the misconduct described in the Order.

21. **“Recognized Loss”** means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation. The Fund Administrator will calculate each Preliminary Claimant’s Recognized Loss as the difference between the Preliminary Claimant’s aggregate Investment and aggregate Recovery, with each Investment and Recovery amount adjusted for the time value of money from the date of the payment or recovery through the last date of the Relevant Period, as described in the Plan of Allocation.

22. **“Recovery”** means an amount recovered by the Preliminary Claimant, including without limitation, redemptions, periodic withdrawals, interest or dividend payments, as well as compensation for the loss that resulted from the conduct described in the Order that was received from another source, such as amounts recovered through litigation against the Respondent or FINRA proceedings, to the extent known to the Fund Administrator.

23. **“Relevant Period”** is November 1, 2014 through March 31, 2018, inclusive.

24. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the attempts by the Fund Administrator to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### **IV. TAX COMPLIANCE**

25. On October 18, 2021, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.<sup>2</sup> 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.<sup>3</sup>

26. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not

---

<sup>2</sup> See Order Appointing Tax Administrator, Exchange Rel. No. 93775 (Oct. 18, 2021).

<sup>3</sup> See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 85174 (Feb. 22, 2019).

limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

27. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

## **V. FUND ADMINISTRATOR**

28. Catherine E. Pappas is proposed to be the fund administrator for the Fair Fund (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. In accordance with Rule 1105(c) of the Commission’s Rules,<sup>4</sup> no bond is required since the Fund Administrator is a Commission employee.

29. 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 obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); directing the disbursement of the Fair Fund in accordance with this Plan as ordered by the Commission; working with the Commission’s Office of Financial Management (“OFM”) to research and reconcile errors; directing the reissue of payments, when possible; and working with the Tax Administrator to prepare a final accounting.

30. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan. If the Fund Administrator deems a change to be material, Commission approval of the change is required prior to implementation by amending the Plan.

31. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown.

---

<sup>4</sup> 17 C.F.R. § 201.1105(c).

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

32. Using information obtained during and after its investigation, the Commission has identified the Preliminary Claimants.

### Procedures for Locating and Notifying Preliminary Claimants

33. Within thirty (30) days of Commission approval of the Plan, the Fund Administrator will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

34. If any mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend it the Preliminary Claimant's new address within thirty (30) days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

35. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

### Procedures to Request Plan Notice

36. Any Person who did not receive a Plan Notice as described in paragraph 33, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant, should contact the Fund Administrator, in writing, within sixty (60) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The communication should be directed to:

SEC Office of Distributions  
Attn: Catherine E. Pappas, Fund Administrator  
(AP File # 3-20381)  
100 F Street NE  
Mail Stop 5012  
Washington, DC 20549

The Fund Administrator will send the Person a Plan Notice within thirty (30) days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

#### Failure to Respond to Plan Notice

37. If a Preliminary Claimant was requested to respond and fails to respond within thirty (30) days from the initial mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Preliminary Claimant by whatever alternative contact information is available, including telephone or email, and if no alternative contact information is available, by a second mailing. The second attempt will take place no more than sixty (60) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

38. Disputes will be limited to the amount of the calculated Investment and Recovery. Within thirty (30) days of the initial mailing Plan Notice, the Fund Administrator must receive a written communication detailing any dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

39. Within ninety (90) days of the initial mailing of the Plan Notices, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 38 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 37 above, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

#### Distribution Methodology

40. The Fund Administrator will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed Eligible Claimants. All Eligible Claimants who are determined to receive a Distribution Payment will be deemed a Payee.

### Establishment of a Reserve

41. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

42. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 55.

### Preparation of the Payment File

43. Within one hundred fifty (150) days of Commission approval of the Plan, the Fund Administrator will compile the Payee information, including the name, address, method of payment, the amount of any tax withholding, and the amount of the Distribution Payment for all Payees (the "Payee List"), necessary to make disbursements through BFS.

### Distribution of the Fair Fund

44. Pursuant to Rule 1101(b)(6) of the Commission's Rules, 17 C.F.R. § 201.1101(b)(6), the Commission staff will obtain an order from the Commission authorizing the disbursement of funds to Payees in accordance with the Payee List. The BFS will mail checks or electronically transfer funds to each Payee as instructed by the Fund Administrator in accordance with the Payee List.

45. All checks will be void one year from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the BFS will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 49.

46. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued later than one year from the date the original check or payment was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator for review and approval.

47. All Distribution Payments, either on their face or in the mailing referenced in paragraph 46, will clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.



## Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

48. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as “undeliverable,” or whose electronic payment does not go through. If new address or payment information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address or reissue the electronic payment. If new address or payment information is not available after a diligent search (and in no event no later than the stale date of the original check or one year from the original payment) or if the payment is returned again, the check shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check or electronic payment. If the Fund Administrator is unable to find a Payee’s correct address or payment information, the Fund Administrator, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

49. The Fund Administrator will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the stale date of the original check. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void one year after the date of reissuance, and in no event will a check be reissued after the stale date of the original check without good cause found by the Fund Administrator.

50. The Fund Administrator will work with OFM and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator, working with OFM, is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator, working with OFM, is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

51. The Fund Administrator will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks (other than those returned as “undeliverable”) and returned electronic payments, and take appropriate action to follow-up on the status of such uncashed checks and returned payments. The Fund Administrator may reissue such payments, subject to the time limits detailed herein.

52. At the discretion of the Fund Administrator, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Fund Administrator will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

### Receipt of Additional Funds

53. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission's termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan and pursuant to the Commission's Rules.

### Disposition of Undistributed Funds

54. If funds remain following the initial distribution and payment of all Administrative Costs, the Fund Administrator may seek subsequent distribution(s) of any available remaining funds, pursuant to the Commission's Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

55. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the "Residual"). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

56. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (the "Exchange Act"), after the final accounting is approved by the Commission.

### Administrative Costs

57. All Administrative Costs will be paid from the Fair Fund in accordance with the Commission's Rules.

### Accountings

58. When all funds have been disbursed, except for the Residual described in paragraph 55, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the Commission's approval prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

### Termination of the Fair Fund

59. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; and (b) all Administrative Costs have been

paid. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of the Residual that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; and (c) termination of the Fair Fund.

## **VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT**

60. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the “Notice”) shall be published on the Commission’s website <http://www.sec.gov/litigation/fairfundlist.htm>. Any Person wishing to comment on the Plan must do so in writing by submitting their comments 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, N.E., Washington, D.C. 20549-1090; (b) by using the Commission’s Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or (c) by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by e-mail or via the Commission’s website should include “Administrative Proceeding File No. 3-20381 in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

## **Exhibit A**

### **PLAN OF ALLOCATION**

This Plan of Allocation is designed to compensate investors who held advisory accounts at the Respondent during the period November 1, 2014 through March 31, 2018, inclusive (the “Relevant Period”) and who suffered a loss as a result of the misconduct described in the Order. Based upon records obtained by the Commission during and after its investigation, the Fund Administrator has identified those investors, or their lawful successors, who held advisory accounts at the Respondent during the Relevant Period and who may have suffered losses as a result of the misconduct described in the Order (the “Preliminary Claimants”).

The Fund Administrator will calculate each Preliminary Claimant’s loss Recognized Loss as follows:

1. For each Investment,<sup>5</sup> calculate the time value of money by applying to the Investment the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the start of the calendar quarter following the date of the Investment to the end of the Relevant Period;
2. For each Recovery, calculate the time value of money by applying to the Recovery the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the start of the calendar quarter following the date of the Recovery to the end of the Relevant Period;
3. Sum each Investment and its associated time value of money amount across all the Preliminary Claimant’s Investments (“Aggregate Adjusted Investment”);
4. Sum each Recovery and its associated time value of money amount across all the Preliminary Claimant’s Recoveries (“Aggregate Adjusted Recovery”); and
5. Calculate Recognized Loss as Aggregate Adjusted Investment minus Aggregate Adjusted Recovery.

If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

### **Additional Provisions**

**Allocation of Funds:** If the Net Available Fair Fund is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will

---

<sup>5</sup> All capitalized terms not defined in this Plan of Allocation shall have the same meanings as in the Plan.

equal his, her or its Recognized Loss, plus “Reasonable Interest” if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata* Percent” of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the “Minimum Distribution Amount.”

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants his, her, or its Recognized Losses in full, the Fund Administrator, in consultation with the Commission staff, may include interest in the distribution amount to compensate Eligible Claimants for the time value of their respective Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant’s Reasonable Interest amount will be equal to his, her or its *Pro Rata* Percent of the excess funds.

Pro Rata Percent: A *Pro Rata* Percent computation is intended to measure Eligible Claimants’ Recognized Losses against one another. The Fund Administrator shall determine each Eligible Claimant’s *Pro Rata* Percent as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest, if any). If an Eligible Claimant’s distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment equal to his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss, plus Reasonable Interest, if applicable.