

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19266

In the Matter of	:	
	:	
Foundations Asset Management, LLC,	:	PROPOSED PLAN OF
Michael W. Shamburger, and Rob E.	:	DISTRIBUTION
Wedel	:	
	:	
Respondents.	:	

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 disgorgement, prejudgment interest, and civil money penalties paid by Foundations Asset Management, LLC, Michael W. Shamburger, and Rob E. Wedel (collectively, the “Respondents”) in the above-captioned matter.¹

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondents’ conduct described in the Order in connection with Respondents’ improper disclosure of conflicts of interest to investors and broker-dealer registration violations. Based on information obtained by the Commission staff during 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 the Respondents’ undisclosed compensation

¹ See Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and 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, Securities Act Rel. No. 86446 (July 24, 2019) (the “Order”).

based on the investors' investments in Alaska Financial Company III LLC ("AFC III") promissory notes from May 3, 2013 through June 30, 2016. The undisclosed compensation occurred in the form of up-front compensation and trailing fees, both of which were calculated based on investment amounts.

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 July 24, 2019, the Commission issued the Order instituting and simultaneously settling administrative and cease-and-desist proceedings against the Respondents. In the Order, the Commission found that the Respondents violated provisions of the federal securities laws in connection with conflicts of interest that were improperly disclosed to investors, as well as broker-dealer registration violations by registered investment adviser FAM and its two principals, Shamburger and Wedel.

7. The Commission found FAM received approximately \$254,000 in compensation from private real estate fund AFC III and AFC III's manager, McKinley Mortgage Co. LLC ("McKinley"), while acting as an unregistered broker, and this compensation was not properly disclosed to FAM clients. FAM, through Shamburger, also made false and misleading statements in five Form ADV Part 2A filings filed with the Commission between March 2014 and March 2015, regarding the compensation it received from selling AFC III securities and advising FAM clients.

8. The Commission found that FAM had two undisclosed compensation agreements with McKinley regarding its clients' AFC III investment: compensation calculated as a percentage of an initial investment and trailing fees based on FAM client investments that remained with AFC III each quarter.

9. As an investment adviser, FAM was obligated to fully disclose all material facts to advisory clients, including potential conflicts of interest between itself and its clients. FAM did not adequately disclose to clients the conflicts of interest it had in recommending AFC III investments, which allowed it to receive compensation higher than the typical advisory fee charged to clients on other investments.

10. The Commission also found false statements and misleading statements in ADV forms that FAM, through Shamburger, filed with the Commission between March 2014 and March 2015 regarding the compensation it received for selling AFC III securities and advising FAM clients.

11. In total, the Commission ordered the Respondents to pay \$253,784 in disgorgement, \$25,163 in prejudgment interest, and \$160,000 in civil money penalties, of which \$114,000 of the disgorgement was deemed satisfied by the undertaking contained in paragraph 30 of the Order for a total of \$324,947.00, to the Commission. The Commission also created the Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors.

12. The Respondents have 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:

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

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

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

16. **"Excluded Party"** shall mean: (a) the Respondents, or Respondents' employees, advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, siblings, children, or controlled entities; and (b) 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.

17. **"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 Respondents' violations described in the Order.

18. **"Final Determination Notice"** means the written notice sent by the Third Party to those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 42, notifying the Preliminary Claimant that they have been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.

19. **"Net Available Fair Fund"** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

20. **“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.

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

22. **“Plan Notice”** means a written notice from the Fund Administrator to Preliminary Claimants 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 them from being deemed an Unresponsive Preliminary Claimant, their preliminary Recognized Loss, 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 and the Third Party as resources for additional information or to contact with questions regarding the distribution.

23. **“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.

24. **“Preliminary Claimant”** means those Persons, or their lawful successors, identified as investors in the Security during the Relevant Period by the Fund Administrator based on her review and analysis of applicable records obtained by the Commission staff during their investigation.

25. **“Recognized Loss”** means the portion of the Respondents’ undisclosed compensation allocated to a Preliminary Claimant in accordance with the Plan of Allocation.

26. **“Relevant Period”** is from May 3, 2013 through June 30, 2016.

27. **“Security”** means AFC III promissory notes.

28. **“Third Party”** means Krista L. Freitag, by and through E3 Realty Advisors, Inc. dba E3 Advisors.

29. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Third Party has not been able to verify and/or who does not timely respond to the Third Party’s attempts 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

30. On August 11, 2020, 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.² 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.³

31. 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 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.

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

V. FUND ADMINISTRATOR

33. Allison Moon 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,⁴ no bond is required since the Fund Administrator is a Commission employee.

34. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. The Fund Administrator will engage the Third Party to perform some of the administrative tasks associated with implementing the Plan. The Third Party’s fees and expenses of approximately \$11,484.95 will be paid from the Fair Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the Commission staff. This will include, among other things, the Third Party taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establish a website <https://mckinleymortgage.com> and have staff available to address inquiries regarding the Plan; prepare accountings regarding the disbursement of the Fair Fund; cooperate with the Tax Administrator appointed by the Commission to issue payments regarding any tax liabilities as determined by the Tax Administrator and to ensure the Tax Administrator has sufficient information to comply with

² See Order Appointing Tax Administrator, Exchange Rel. No. 89521 (Aug. 11, 2020).

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

⁴ 17 C.F.R. § 201.1105(c).

income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disburse the Fair Fund in accordance with this Plan, as ordered by the Commission; and research and reconcile errors and reissue payments, when possible.

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

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

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

37. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those persons who invested in the Securities during the Relevant Period.

Procedures for Locating and Notifying Preliminary Claimants

38. Within fourteen (14) days of Commission approval of the Plan, the Third Party will send to each Preliminary Claimant's last known email address (if known) and/or mailing address the Plan Notice 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, their estimated Recognized Loss, 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 and Third Party in order to provide any requested information or to contact with questions regarding the distribution.

Undeliverable Mail

39. If any mailing is returned as undeliverable, the Third Party will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Third Party will then resend it to the Preliminary Claimant's new address within fourteen (14) days of receipt of the returned mail. If the mailing is returned again, and the Third Party, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

40. 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 and/or the Third Party.

Procedures to Request Plan Notice

41. Any Person who does not receive a Plan Notice, as described in paragraph 38, but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator and/or the Third Party within fourteen (14) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. The Third Party will send the Person a Plan Notice within fourteen (14) days of receiving the Person's documentation, if the Fund Administrator and Third Party determine that the Person should have received a Plan Notice.

Failure to Respond to Plan Notice

42. If a Preliminary Claimant is requested to respond and fails to respond within fourteen (14) days from the mailing of the Plan Notice, the Third Party will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email. The second attempt will in no event take place more than thirty (30) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Third Party's contact attempts as described in this paragraph, the Fund Administrator and the Third Party, in their discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Final Determination Notices

43. Within sixty (60) days of the initial mailing of the Plan Notices, the Third Party will send a Final Determination Notice to those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 38 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

44. The Fund Administrator will calculate each Preliminary Claimant's 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 an Eligible Claimant. All Eligible Claimants who are determined to receive a Distribution Payment will be deemed a Payee.

Establishment of a Reserve

45. 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 and the Third Party, will establish a reserve to pay future Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

46. 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 57 below.

Preparation of the Payment File

47. Following the issuance of the Final Determination Notice, the Third Party will compile and send to the Fund Administrator the Payee information, including the name, contact information, Recognized Loss as calculated by the Fund Administrator, and the amount of the Distribution Payment as calculated by the Fund Administrator for all Payees (the “Payee List”).

The Bank Account

48. Prior to the disbursement of the Net Available Fair Fund the Third Party will establish a bank account at a commercial bank not unacceptable to the Commission (the “Bank”), and positive pay procedures will be followed. The name on the bank account will be in the name of the qualified settlement fund.

Distribution of the Fair Fund

49. Pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), the Fund Administrator will obtain an order from the Commission to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List, for distribution by the Third Party in accordance with the Plan. Pursuant to the order, funds will be transferred to the Bank, and the Third Party will be responsible for issuing Distribution Payments to Payees in accordance with the Payee List. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee bank account in accordance with written instructions provided to the Bank by the Third Party.

50. All checks will bear a stale date of ninety (90) 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. 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 54.

51. 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 after ninety (90) days from the date the original check was issued; and (d) contact information for the Third Party for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

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

Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

53. The Third Party 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 Third Party as “undeliverable.” If new address information becomes available, the Third Party will repack the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than the stale date) or if the distribution check is returned again, the check shall be voided and the Third Party shall instruct the issuing financial institution to stop payment on such check. If the Third Party is unable to find a Payee’s correct address, the Third Party, in its 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.

54. The Third Party will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if the request is received prior to the initial stale date. 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 Third Party will request, and must receive, documentation to support the requested change. The Third Party will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Third Party in consultation with Commission staff, such change request is properly documented, the Third Party will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of ninety (90) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after ninety (90) days from the date of the original issuance without the approval of Commission staff.

55. The Third Party will work with the Bank and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Third Party is responsible for researching and reconciling errors and reissuing payments when possible. The Third Party 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.

56. The Third Party will make and document its best efforts to contact Payees to follow up on the status of uncashed distribution checks over \$100 (other than those returned as undeliverable) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Third Party may reissue such checks, subject to the time limits detailed herein.

Disposition of Undistributed Funds

57. 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.

58. All funds remaining in the Residual that are infeasible to distribute to investors will be sent to the parallel proceeding in *SEC v. McKinley Mortgage Co. LLC, et al.*, Civil Action No. 2:18-CV-616 in the Eastern District of California.⁵

Administrative Costs

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

Accountings

60. Once the Fair Fund has been transferred from the BFS to the Bank, the Third Party will file an accounting with the Commission during the first ten (10) days of each calendar quarter. The Third Party will file an accounting of all monies earned or received and all monies spent in connection with the administration of the Plan.

61. When all funds have been disbursed, except for the Residual described in paragraph 57 above, the Third Party will prepare and submit to the Fund Administrator a final accounting on a standardized form provided by the Commission staff. 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 approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

Termination of the Fair Fund

62. 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 any Residual remaining in the Fair

⁵ Rule 1102(a). Provisions for Payment. *Payment to registry of the court or court-appointed receiver.* Subject to such conditions as the Commission or the hearing officer shall deem appropriate, a plan for the administration of a Fair Fund or a disgorgement fund may provide for payment of funds into a court registry or to a court-appointed receiver in any case pending in federal or state court against a respondent or any other person based upon a complaint alleging violations arising from the same or substantially similar facts as those alleged in the Commission’s order instituting proceedings. 17 C.F.R. § 201.1102(a).

Fund that is infeasible to return to investors, and any amounts returned to it in the future that are infeasible to return to investors, to the Fair Fund in *SEC v. McKinley Mortgage Co. LLC, et al.*, Civil Action No. 2:18-CV-616 in the Eastern District of California; (b) discharge of the Fund Administrator; and (c) termination of the Fair Fund.

VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT

63. 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); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission’s website should include “Administrative Proceeding File No. 3-19266 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 were harmed by the Respondents' improper disclosure of conflicts of interest to investors and broker-dealer registration violations in connection with their investments in Alaska Financial Company III LLC promissory notes (the "Securities") from May 3, 2013 through June 30, 2016 (the "Relevant Period"). The undisclosed compensation occurred in the form of up-front compensation ("Up-Front Compensation") and trailing fees ("Trailing Fees"), both of which were calculated based on investment amounts.¹ Based on records obtained by the Commission during its investigation—including email correspondence, invoices, and bank records—the Fund Administrator has identified the Preliminary Claimants² who may have suffered a loss due to the misconduct of the Respondents.

The Fund Administrator working with Commission staff accountants will calculate each Preliminary Claimant's loss from Up-Front Compensation ("Recognized Loss from Up-Front Compensation") and loss from Trailing Fees ("Recognized Loss from Trailing Fees") from account-level data obtained by the Commission during its investigation as follows:

- A. Recognized Loss from Up-Front Compensation will be calculated as 1.25% of the initial investment made by the Preliminary Claimant during the Relevant Period.
- B. Recognized Loss from Trailing Fees will be calculated as the sum of the quarterly trailing fees paid to the Respondents during the Relevant Period attributable to the Preliminary Claimant's holdings.

The sum of a Preliminary Claimant's Recognized Loss from Up-Front Compensation and Recognized Loss from Trailing Fees will be totaled to calculate his, her, or its Recognized Loss.

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

Additional Provisions

Allocation of Funds: The Net Available Fair Fund, as defined in the Plan, exceeds the sum of Recognized Losses of all Eligible Claimants. Therefore, each Eligible Claimant's distribution amount will equal his, her, or its Recognized Loss, plus "Reasonable Interest," subject to the "Minimum Distribution Amount" provision below.

Reasonable Interest: The Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, so Reasonable Interest will be included in the distribution

¹ During a portion of the Relevant Period, Trailing Fees were also referred to as "economic adviser fees."

² All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

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 percentage points (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 will receive his, her, or its “*Pro Rata Share*” of the excess funds as the Reasonable Interest amount in their distribution amount.

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

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant’s distribution amount (inclusive of Reasonable Interest, if any) is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment.

Payee: An Eligible Claimant whose distribution amount is equal to or greater than the Minimum Distribution Amount will be deemed a Payee and will 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 the Payee’s Recognized Loss, plus Reasonable Interest.