

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16846

In the Matter of

UBS FINANCIAL SERVICES
INCORPORATED OF PUERTO RICO

Respondent.

PROPOSED PLAN OF DISTRIBUTION

I. Introduction

1. The Division of Enforcement submits this Proposed Plan of Distribution (“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 (“Rules”).¹ The Plan provides for the distribution of funds collected in the above-captioned proceedings to compensate investors harmed by the securities violations of UBS Financial Services Incorporated of Puerto Rico (“UBSPR”) (“Respondent”).

2. On September 29, 2015, the Commission issued a settled order (“Order”)² against UBSPR. The Order found that the Respondent violated Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (“Exchange Act”) by failing to supervise Jose Ramirez, Jr. (“Ramirez”), a registered representative and associated person of UBSPR and UBSPR’s Guaynabo branch, who engaged in conduct that violated the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

3. According to the Order, from approximately 2011 through 2013, Ramirez made material misrepresentations and omissions to customers and engaged in a fraudulent scheme involving the offer and sale of approximately \$50 million of certain UBSPR affiliated, non- exchange-traded, closed-end funds (“CEFs”).³ Ramirez solicited certain

¹ 17 C.F.R. § 201.1101.

² See Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Exchange Act Rel. No. 76013 (Sept. 29, 2015), Admin. Proc. File No. 3-16846.

³ Cusip’s for the relevant CEFs are: 745274100, 74527K104, 74527M100, 74527N108, 74527Q101, 745276105, 745296103, 74529P101, 74527G103, 87675M102, 87675H103, 87675W100, 74514M105, 74514P108, 74514T100, 74527W108, 74528E107, 744907106, 744908104, 744909102, 74528A105, 74528B103, 74528D109.

customers to improperly use proceeds from non-purpose lines of credit (“LOCs”) offered by UBSPR’s banking affiliate, UBS Bank USA (“BUSAs”), to purchase additional shares of UBSPR CEFs. According to UBSPR’s Order, UBSPR lacked procedures and systems to prevent and detect the broker’s misconduct. On at least two occasions, UBSPR was made aware that Ramirez may have been violating internal policy, but UBSPR’s procedures failed to address reasonable follow-up for violations of the policy.

4. As set forth in the Order, UBSPR agreed to settle the Commission’s charges by paying disgorgement of \$1,188,149.41, prejudgment interest of \$174,196.97, and a civil money penalty of \$13,637,653.62 to the Commission. The UBSPR Order created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the amounts ordered. Respondent paid the total \$15,000,000.00 as ordered (the “Fair Fund”). The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit at the United States Department of Treasury’s Bureau of the Fiscal Service (“BFS”) for investment. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

5. The Commission contemporaneously filed a settled order against Ramiro L. Colon, III, the Guayanabo branch office manager of UBSPR for violations of Section 15(b)(4)E of the Exchange Act for failing to supervise Ramirez.⁴ According to Colon’s Order, Colon failed to follow up on a red flag that alerted him to the possibility that Ramirez was engaged in a scheme to use proceeds from LOCs to purchase CEFs. Colon agreed to settle the Commission’s charges by paying a \$25,000 penalty to the Commission. Colon paid the \$25,000 penalty as ordered.⁵

6. On September 29, 2015, the same day that the Commission entered the UBSPR and Colon Orders, the Commission also filed a civil action against Ramirez. Currently, pending in district court, that action, *SEC v. Jose G. Ramirez, Jr.*, No. 3:15-cv-02365 (D. P.R.), alleges that from approximately 2006 through 2013, Ramirez made material misrepresentations and omissions to customers and engaged in a fraudulent scheme involving the offer and sale of approximately \$50 million of certain UBSPR affiliated, non-exchange-traded CEFs. According to the complaint, Ramirez affected a scheme which increased his compensation by soliciting certain customers to improperly use proceeds from non-purpose LOCs offered by UBSPR’s banking affiliate, to purchase additional shares of UBSPR CEFs.

7. The Commission staff intends to request that the court overseeing *SEC v. Jose G. Ramirez, Jr.*, direct any funds collected as a result of monetary sanctions being sought in the Commission’s litigation to the Commission for subsequent distribution pursuant to the Plan.

8. By order dated February 12, 2016, the Commission appointed Damasco & Associates LLP (n/k/a Miller Kaplan Arase LLP) as the tax administrator (“Tax

⁴ See Order Instituting Administrative Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Exchange Act Rel. No. 76014 (Sept. 29, 2015), Admin. Proc. File No. 3-16847.

⁵ It is anticipated that Colon’s \$25,000 penalty will be added to the Fair Fund for distribution pursuant to the Plan.

Administrator”)⁶ to execute all income tax reporting requirements, including the preparation and filing of tax returns, for the Fair Fund.

9. By order dated November 3, 2016, the Commission appointed Rust Consulting, Inc. to serve as the fund plan administrator (“Fund Administrator”) and set its bond at \$15,000,000.00⁷ in accordance with Rule 1105(c) of the Rules.⁸ The Fund Administrator will, among other things, oversee all aspects of the administration and distribution of the Fair Fund in accordance with the terms of the Plan to be approved by the Commission.

10. The Plan was developed jointly by the Fund Administrator and the Commission staff in accordance with practices and procedures customary in Fair Fund administrations. The Plan governs the administration and distribution of the Fair Fund, and sets forth the method and procedures for distributing the assets of the Fair Fund to certain investors harmed by the Respondents’ misconduct.

II. Definitions

11. As used in the Plan, the following definitions shall apply:

- a. “**Check-Cashing Period**” means the ninety (90) days following the mailing of Distribution Payments to Eligible Claimants in accordance with the Plan.
- b. “**Claim Form**” means the form designed by the Fund Administrator for the filing of claims in accordance with the terms of the Plan. The Claim Form will require, at a minimum, sufficient documentation to reflect any Potential Claimant’s purchases and dispositions of Eligible Securities during the Relevant Period and the social security or tax identification number of the Potential Claimant.
- c. “**Claims Bar Date**” means the date established in accordance with the Plan by which Claim Forms must be postmarked by or submitted electronically in order to receive consideration under the Plan. Subject to certain extensions provided for in the Plan, the Claims Bar Date will be one hundred twenty (120) days from the Initial Mailing.
- d. “**Claims Packet**” means the materials relevant to submitting a claim that may be provided to Potential Claimants known to the Fund Administrator or to those who obtain such materials through a website or other appropriate delivery mechanisms. These materials will include a copy of the Fair Fund Notice and a Claim Form (together with

⁶ See Order Appointing Tax Administrator, Exchange Act Rel. No. 77130 (Feb. 12, 2016).

⁷ See Order Appointing Fund Plan Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 79227 (Nov. 3, 2016).

⁸ 17 C.F.R. § 201.1105(c).

instructions for the completion of the Claim Form, in both English and Spanish).

- e. “**Days**” means calendar days, unless otherwise specified herein.
- f. “**Determination Notice**” means the notice sent by the Fund Administrator to Potential Claimants that submitted a deficient or ineligible Claim Form. The Determination Notice will provide to each Potential Claimant whose claim is deficient, the reason(s) for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding further necessary actions. In the event the claim is ineligible, the Determination Notice will state the reason for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim.
- g. “**Distribution Payment**” means the payment to an Eligible Claimant in accordance with the terms of the Plan.
- h. “**Eligible Claimant**” means a Potential Claimant who suffered a loss as a result of transactions in Eligible Securities during the Relevant Period and who is determined by the Fund Administrator to be eligible for a Distribution Payment from the Net Fair Fund. An Eligible Claimant does not include:
 - i. Respondent or any Person who served as an officer or director of UBSPR during the Relevant Period, or any subsidiary or affiliate of UBSPR directly involved in the conduct detailed in the Orders;
 - ii. Any employee or former employee of UBSPR or any of its affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Orders;
 - iii. Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct found in the Orders or any related Commission action, unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Claim Form;
 - iv. The Fund Administrator and those persons assisting the Fund Administrator in its role as Fund Administrator;
 - v. Any affiliates, assigns, creditors, heirs, distributees, spouses, parents, children or controlled entities of any of the foregoing Persons described in h.i – h.iv above; or

- vi. Any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund; however, this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law.
- i. "**Eligible Loss Amount**" is the amount of loss an Eligible Claimant incurred through the investment in Eligible Securities during the Relevant Period calculated in accordance with the Plan of Allocation, as detailed in Appendix 1, attached hereto.
- j. "**Eligible Securities**" refers to investments in UBSPR non-exchange-traded, CEFs that were purchased through proceeds received from a UBSPR LOC during the Relevant Period.
- k. "**Fair Fund**" refers to the \$15,000,000.00 fund created by the Commission pursuant to Section 308 (a) of Sarbanes-Oxley Act of 2002, as amended, for the benefit of investors harmed by the Respondents' misconduct described in the Orders, and any additions thereto as may be provided by future Commission or Court order or agreement in related cases or otherwise.
- l. "**Fair Fund Notice**" means a written notice from the Fund Administrator to Potential Claimants informing them of the Fair Fund and the eligibility requirements, and explaining how to submit a claim. The notice will be in both English and Spanish and will be mailed and published according to the schedule detailed herein.
- m. "**Final Determination Notice**" means the Fund Administrator's written reply to each Potential Claimant who timely responds to the Determination Notice in an effort to cure a deficiency or seek reconsideration of an ineligible claim. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.
- n. "**Fund Administrator**" refers to Rust Consulting, Inc. (collectively, with all employees, agents, consultants, or independent contractors of such firm), which has been appointed by the Commission to administer and distribute the Fair Fund in accordance with the terms of the Plan and the Commission's orders.
- o. "**Net Fair Fund**" means the Fair Fund, plus earned interest, less any amounts expended or to be expended for administering the Fair Fund (e.g., reasonable fees and expenses incurred or to be incurred in administering the Plan and the payment of taxes on the Fair Fund).
- p. "**Notice Publication**" means the publication of the Fair Fund Notice (in both English and Spanish), or a notice closely resembling the Fair

Fund Notice, in print or internet media in a manner deemed appropriate by the Fund Administrator and not unacceptable to the Commission staff.

- q. **“Person”** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.
- r. **“Plan of Allocation”** means the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is set forth in Appendix 1 and attached hereto.
- s. **“Potential Claimants”** means those Persons, or their lawful successors or assigns, identified by the Fund Administrator as having possible claims to recover from the Fair Fund under the Plan, or Persons asserting that they have possible claims to recover from the Fair Fund under the Plan.
- t. **“Relevant Period”** means the period from January 1, 2011 through September 13, 2013.
- u. **“Tax Administrator”** refers to Damasco & Associates LLP (n/k/a Miller Kaplan Arase LLP), the firm which has been appointed by the Commission as the Tax Administrator in this action.

III. Administration of the Fair Fund

A. Identification of and Notice to Potential Claimants

12. The Fund Administrator will, insofar as is practicable, use its best efforts to identify Potential Claimants from a review of trading records and account information provided by the Respondents, registered broker-dealers, investment advisers and other sources.

13. The Fund Administrator will create a claims database consisting of the records provided by the Respondents or otherwise obtained by the Fund Administrator.

14. The Fund Administrator will design and submit a Claims Packet, including a Fair Fund Notice and a Claim Form, to the Commission staff for review and approval.

15. Before commencing any mailing, the Fund Administrator will run a National Change of Address search to obtain updated addresses for all Potential Claimants recorded in the database.

16. Within seventy-five (75) days of the Commission’s approval of the Plan, the Fund Administrator will commence mailing the Claims Packet to all Potential Claimants known to the Fund Administrator (“Initial Mailing”). Each Claims Packet will notify the Potential Claimant of the Fair Fund, contain a brief description of the eligibility requirements,

generally describe the Fair Fund’s claim and distribution processes, explain how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund’s website, and provide instructions for submitting a claim.

17. Within twenty (20) days of the Initial Mailing, the Fund Administrator will carry out the Notice Publication, in both English and Spanish, which will notify the public of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund’s claim and distribution processes, explain how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund’s website, and provide instructions for completing and submitting a Claim Form.

18. The Fund Administrator will establish and maintain a website devoted solely to the Fair Fund. The Fair Fund’s website, located at www.SECUBSFairFund.com, will make available a copy of the Fair Fund Notice, the approved Plan, and provide information regarding the claims process and eligibility requirements for participation in the distribution in the form of frequently asked questions. The website will also include a copy of a Claim Form and related materials in a downloadable form, and such other information covering process or substance that the Fund Administrator believes will be beneficial to Potential Claimants, all of which will be provided in both English and Spanish. The Commission staff retains the right to review and approve any material posted on the Fair Fund’s website.

19. The Fund Administrator will provide a copy of the Plan and Fair Fund Notice to the Commission staff to post the approved Plan and Fair Fund Notice on the Commission’s website, on its Information for Harmed Investors page, located at <https://www.sec.gov/divisions/enforce/claims.htm> and establish a link to the Fair Fund’s website.

20. Within 10 business days of approval of the Plan the Fund Administrator will establish and maintain a toll-free telephone number for Potential Claimants to call to hear prerecorded information about the Fair Fund, in both English and Spanish, twenty-four (24) hours a day, seven (7) days a week. Potential Claimants who call the toll-free number will have the option of leaving a voice message so that a representative can return their call. The Fund Administrator will advise the Commission staff of the toll-free telephone number. The Fund Administrator will also establish and maintain a traditional mailing address and an email address to enable Potential Claimants to correspond with the Fund Administrator, which will be provided to Commission staff.

21. The Fund Administrator will attempt to locate any Potential Claimant whose mailing is returned by the United States Postal Service (“USPS”) as undeliverable and will document all such efforts. The Fund Administrator will utilize all means reasonably available, including LexisNexis, to obtain updated addresses in response to undeliverable Claims Packets, and forward any returned mail for which an updated address is provided or obtained. The Fund Administrator will make available, upon request by the Commission staff, a list of all Potential Claimants whose Claims Packets have been returned as undeliverable due to incorrect addresses and for which the Fund Administrator has been unable to locate current addresses.

B. Claims Process

22. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with a date, which is one hundred twenty (120) days from the Initial Mailing.

23. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Fund Administrator a properly completed Claim Form reflecting such Potential Claimant's claim, together with all required supporting documentation. The burden to ensure the Claim Form is properly completed and timely postmarked to prove receipt of the claim by the Fund Administrator by the Claims Bar Date will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their claims in a manner that will enable them to prove receipt of the claim by the Fund Administrator. A Claim Form that is postmarked after the Claims Bar Date will not be accepted unless the deadline is extended by the Fund Administrator for good cause shown, after consultation with Commission staff.

24. Claim Forms must be properly filled out per the instructions provided by the Fund Administrator, and must be accompanied by such supporting documentation 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 Eligible Securities during the Relevant Period, as well as holdings of Eligible Securities on pertinent dates.

25. All claims and supporting documentation necessary to determine a Potential Claimant's eligibility to receive a distribution from the Net Fair Fund must be verified 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 a Person authorized to act on the Potential Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems necessary.

26. The Fund Administrator will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing the Claim Form and supporting documentation (or the lack thereof), verifying the claim, and calculating each Potential Claimant's Eligible Loss Amount pursuant to the Plan of Allocation. Each Potential Claimant will have the burden of proof to establish the validity and amount of his, her, or its claim, and that they qualify as an Eligible Claimant. The Fund Administrator will have the right to request, and the Potential Claimant will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

C. Deficiency and Claim Determination Processes

27. The Fund Administrator will provide a Determination Notice to each Potential Claimant that submitted a deficient or ineligible Claim Form within 60 days from the Claims Bar Date, setting forth the Fund Administrator's conclusions concerning such claim.

28. The Determination Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (*e.g.*, failure to provide required information or documentation). The Determination Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any Potential Claimant with a deficient claim will have forty-five (45) days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

29. In the event the claim is denied, in whole or in part, the Determination Notice will state the reason for such denial. Any Potential Claimant seeking to dispute the calculated Eligible Loss Amount or seek reconsideration of a denied claim must advise the Fund Administrator in writing within forty-five (45) 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.

30. The Fund Administrator will send a Final Determination Notice to all Potential Claimants who responded to the Determination Notice in an effort to cure a deficiency or to seek reconsideration of a denied claim. The Fund Administrator will send such Final Determination Notices no later than sixty (60) days following receipt of documentation or information in response to the Determination Notice, or such longer time as the Fund Administrator determines is necessary for a proper determination concerning the claim. The Final Determination Notice will constitute the Fund Administrator's final ruling on the claim.

31. The Fund Administrator will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. In accordance with the Plan, all decisions made by the Fund Administrator will be final.

32. The Potential Claimant has the burden of notifying the Fund Administrator of a change in his, her, or its current address and other contact information.

33. The receipt of Eligible Securities by gift, inheritance, devise, or by operation of law will not be deemed to be a purchase of Eligible Securities, nor will it be deemed an assignment of any claim relating to the purchase of such securities, unless specifically so provided in the instrument of inheritance. However, the recipient of Eligible Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and 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 transactions in Eligible Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

34. 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 issue any Distribution 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. With respect to any retirement plan that has been closed prior to the Fund Administrator's identification of Potential Claimants, the Fund Administrator will endeavor to distribute funds directly to the beneficial accountholders of such retirement plans, if the information required for such a distribution is known to or provided to the Fund Administrator.

IV. Establishment of the Escrow Account

35. Prior to disbursement of the Net Fair Fund, the Fund Administrator will establish accounts described as follows at a U.S. commercial bank ("Bank"), not unacceptable to Commission staff. The Fund Administrator will establish an escrow account (the "Escrow Account") pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff. The Fund Administrator will also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linked checking and investment account) (the "Distribution Account") for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bear the Employer Identification Number ("EIN") of the Fair Fund as custodian for the distributees of the Plan. The name of each account will be in the following form: "Name of Escrow Account, EIN, as custodian for the benefit of investors allocated a distribution pursuant to the Distribution Plan in In the Matter of UBS Financial Services Incorporated of Puerto Rico, Administrative Proceeding File No. 3-16846."

36. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States ("U.S.") Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants or tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, or investments in money market mutual funds registered under the Investment Company Act of 1940 that directly invest 100% of their assets in short-term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided, however, that the money market mutual funds' investments in short term U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

37. In consultation with the Commission staff, the Fund Administrator will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Fair Fund.

38. All interest earned will accrue for the benefit of the Fair Fund, and all costs associated with the Escrow and Distribution Accounts will be paid from the Fair Fund.

39. Upon transfer from the Commission, the assets of the Net Fair Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of Distribution Payments. All Distribution Payments via check 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 Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

40. The Fund Administrator will provide copies of the bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and will assist the Tax Administrator in obtaining any other statements, as necessary.

V. Distribution

41. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of the Plan. An Eligible Claimant’s Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Appendix 1 to the Plan, will be used to determine the amount of their Distribution Payment.

42. The Fund Administrator will disburse the Net Fair Fund to all Eligible Claimants, in one or more tranches, once all Claim Forms have been processed and all Potential Claimants whose claims have been denied or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth herein. No distribution will be conducted without authorization by the Commission.

43. Within seventy-five (75) days following the date the Fund Administrator has mailed the last Final Determination Notice, the Fund Administrator will prepare a list of all Eligible Claimants, the Eligible Loss Amount, and the Distribution Payment of each Eligible Claimant (“Payment File”). This Payment File shall be accompanied by a reasonable assurances letter as to the completeness and accuracy of the Payment File. The Fund Administrator will also prepare the relevant materials to effect a distribution, including recommending an estimated distributable amount from the Net Fair Fund. The Fund Administrator will retain a prudent reserve to pay any federal, state or local taxes, fees, and investment costs payable in connection with the Fair Fund.

44. Following the Commission’s approval to distribute the Net Fair Fund to Eligible Claimants as provided for in the Plan, the Fund Administrator will commence the distribution to Eligible Claimants as promptly as possible following the transfer of funds.

45. Should the total amount of the Eligible Loss Amounts of all Eligible Claimants exceed the Net Fair Fund, the Fund Administrator will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. This formula will be the fraction of the Eligible Loss Amount of each Eligible Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants.

46. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds the *de minimis* amount of \$10.00.

47. The Fund Administrator in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a Person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payments.

48. Checks will be issued by the Fund Administrator from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this Check-Cashing Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below. Where an Eligible Claimant's check is not negotiated within the Check-Cashing Period and has been voided by the Fund Administrator, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Net Fair Fund.

49. Distribution Payments to Eligible Claimants will be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued;
- c. A statement that reissued checks will expire on the later of ninety (90) days from the date of the original check or sixty (60) days from the date of the reissued check;
- d. A statement that the tax treatment of the distribution is the responsibility of the Eligible Claimant and that the Eligible Claimant should consult his, her, or its tax advisor for advice regarding the tax treatment of the distribution; and
- e. Contact information for the Fund Administrator for questions regarding the Distribution Payment.

50. Distribution Payments and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of their investment. Any such communication, letter or other mailing to Eligible Claimants characterizing the distribution will be submitted to the Commission staff and the Tax Administrator for review and approval.

51. Under no circumstances will the Fund Administrator, its employees or its agents incur any liability to any Person for making a distribution in accordance with the order of the Commission approving the distribution and the schedules of Eligible Claimants, and all Persons shall be enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a Distribution Payment from the Fair Fund, such Eligible Claimant will be deemed to have released all claims that such Eligible Claimant may have against the Fund Administrator, its employees, agents, and attorneys in connection with the Plan and the administration of the Fair Fund, and shall be barred from prosecuting or asserting any such claims.

VI. Post Distribution

A. Handling of Returned or Uncashed Checks

52. The Fund Administrator is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such 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 replacement check be reissued after ninety (90) days from the date of original issuance.

53. The Fund Administrator will research and attempt to locate all Eligible Claimants whose checks are returned to the Fund Administrator as undeliverable by the USPS. However, the Eligible Claimant has the burden of providing the Fund Plan Administrator with any changes to his, her, or its mailing address. The Fund Plan Administrator will mail a reissued check to the updated address, subject to the time limits detailed herein.

54. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Fund Administrator. If such change is properly documented, in the sole discretion of the Fund Administrator, the Fund Administrator will issue an appropriately reissued Distribution Payment, subject to the time limits detailed herein.

55. The Fund Administrator will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed Distribution Payments (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 Fund Administrator may reissue such checks, subject to the time limits detailed herein.

B. Disposition of Remaining Funds

56. If, after the distribution is complete, all tax obligations of the Fair Fund have been satisfied, and funds remain in the Net Fair Fund, the Fund Administrator, will return the remaining funds to the Commission for transfer to the United States Treasury.

VII. The Fund Administrator

57. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Distribution Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and toll-free number to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud

measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimants eligibility; advising Potential Claimants of final claim determinations; and disbursing the Net Fair Fund in accordance with the Plan.

58. The Fund Administrator will take reasonable and appropriate steps to disburse the Fair Fund according to the Plan. The Fund Administrator will inform Commission staff of any changes needed in the Plan. Upon agreement with Commission staff, the Fund Administrator may implement immaterial changes to the Plan to effectuate its purposes. If a change is deemed to be material by Commission staff, Commission approval is required prior to implementation of the change by amending or modifying the approved Plan.

59. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

60. The Fund Administrator is authorized to enter into agreements with institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Fund Administrator under the Plan.

61. The Fund Administrator will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Fund Administrator in furtherance of its duties). Copies of invoices will be provided to the Commission staff on a quarterly basis. All payments to the Fund Administrator will be paid from the Fair Fund. The Fund Administrator will submit invoices to Commission staff for approval by the Commission, pursuant to the Rules.

62. The Fund Administrator may be removed at any time by the Commission, and replaced with a successor. In the event the Fund Administrator decides to resign, it will first give written notice to the Commission staff of such intention, and such resignation will not be effective until the Commission has appointed a successor. The Fund Administrator will then follow such instructions as such successor or the Commission provides in turning over management of the Fair Fund.

63. The Fund Administrator will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. In addition, the Fund Administrator will shut down the website, P.O. Box, and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

VIII. Tax Compliance

64. The Fair Fund is 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. 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. Regs. §§ 1.468B-1 to 1.468B-5, including, but not limited to:

- a. Obtaining a taxpayer identification number;
- b. Submitting requests for funds from the Fair Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and
- c. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Fair Fund.

65. When the Fair Fund is transferred to the Escrow Account for distribution, the Fund Administrator will tender to the Tax Administrator funds necessary to pay taxes upon the request of the Tax Administrator.

66. All fees and expenses of the Tax Administrator will be paid by the Fair Fund as part of the cost of the administration of the Fair Fund. Any taxes on interest earned by the Fair Fund will be paid by the Fair Fund.

IX. Fair Fund Reporting and Accounting

67. The Fund Administrator will provide to Commission staff, a quarterly status report within forty-five (45) days of Commission approval of the Plan, and will provide additional reports and quarterly account statements within ten (10) days after the end of every quarter thereafter as detailed below.

68. Once the money has been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Fund Administrator.

69. The status report and quarterly account statement will inform the Commission staff of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Fund Administrator will specify, at a minimum:

- a. The location of the account(s) comprising the Fair Fund; and
- b. An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under the Plan, and any monies expended from the Fair Fund

to satisfy any fees, taxes and other expenses incurred in the administration of the Fair Fund.

70. The Fund Administrator will prepare a final report and final accounting, in a format to be provided by the Commission staff, when the Fair Fund administration is complete. In compiling the final accounting, the Fund Administrator will coordinate with the Tax Administrator.

71. Commission staff, or other relevant party, shall provide the Fund Administrator with any and all account information relating to the Fair Fund that may be required to meet reporting obligations; including providing copies of any account statements that the Fund Administrator may request.

X. Termination of the Fair Fund

72. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts will be transferred to the Commission.

73. 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 has been submitted to and approved by the Commission;
- b. All taxes, fees and expenses have been paid; and
- c. All remaining funds have been transferred to the Commission for remittance to the United States Treasury.

74. Once the Fair Fund has been terminated, no further claims will be allowed and no additional Distribution Payments will be made whatsoever.

XI. Limitation of Liability

75. When administering the Plan, the Fund Administrator and/or their designees, agents and assignees, may rely on: all applicable law, any orders issued by the Commission, the Secretary by delegated authority or an administrative law judge; and/or any investor information, provided by Commission staff.

76. The Commission reserves the right to amend the Plan from time to time; and retains exclusive jurisdiction over all claims arising in connection with the Plan, including, but not limited to, claims against the Fund Administrator asserting liability for violation of any duty imposed by the Plan or other Commission order.

77. The submission of the Claim Form and the receipt and acceptance of a Distribution Payment by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other than the Fund Administrator), including, without limitation, the Respondent and the Respondent's past or present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.

XII. Notice and Comment Period

78. The Notice of the Proposed Plan of Distribution and Opportunity for Comment ("Notice") will be published in the SEC Docket and 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 (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 (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 3-16846" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Appendix 1

Plan of Allocation

The Fair Fund will be distributed to Eligible Claimants pursuant to the terms of the Plan of Allocation.

CALCULATION OF ELIGIBLE LOSS

1. Based on the formula set forth below, an Eligible Loss Amount shall be calculated for each investment in the Eligible Securities during the Relevant Period that is listed in the claim and for which adequate documentation is provided showing withdrawals from an LOC and purchases of Eligible Securities during the Relevant Period.
2. Eligible Securities purchased during the Relevant Period, and:
 - a. Sold on or before September 13, 2013, the Eligible Loss Amount shall be the total investment dollars invested in the Eligible Securities minus the total proceeds received from the sale of the Eligible Securities.
 - b. Held as of the close of trading on September 13, 2013, the Eligible Loss Amount shall be the total dollars invested in the Eligible Securities minus the value of the Eligible Securities on September 14, 2013.

GENERAL PROVISIONS

3. Subject to the limitations set forth in the Plan, if a Potential Claimant acquired Eligible Securities by way of gift, inheritance, devise or operation of law, such claim will be computed using the date and price of the original purchase and not the date and price of transfer, gift or inheritance. To the extent those investments were not originally purchased in the Relevant Period, the Eligible Loss Amount for that investment shall be zero.

USE OF “FIFO” METHODOLOGY FOR COMPUTATION OF ELIGIBLE LOSSES FOR ELIGIBLE CLAIMANTS WHO MADE MULTIPLE TRANSACTIONS IN ELIGIBLE SECURITIES DURING THE RELEVANT PERIOD

4. For Eligible Claimants who made multiple purchases, acquisitions or sales of Eligible Securities during the Relevant Period, the sales will be matched in chronological order against purchases or acquisitions made in the Relevant Period until all such shares have been exhausted. Purchases and sales of Eligible Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

COMPUTATION OF THE ELIGIBLE LOSS AMOUNT FOR EACH ELIGIBLE CLAIMANT

5. The Eligible Loss Amount will be calculated for the Eligible Securities that were purchased or sold in the Relevant Period, listed in the Claim Form and for which adequate documentation is provided showing withdrawals from an LOC and purchases of Eligible Securities during the Relevant Period. An Eligible Claimant's total Eligible Loss Amount equals the sum of Eligible Losses for all investments in Eligible Securities. If the Eligible Loss Amount calculates to a negative number, that Eligible Claimant's Eligible Loss Amount shall be \$0.00

DISTRIBUTION PAYMENT CALCULATIONS

6. Should the total Eligible Loss Amounts of all Eligible Claimants exceed the Net Fair Fund, the Fund Administrator will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Fund Administrator shall determine each Eligible Claimant's *pro rata* share of the Net Fair Fund based upon each Eligible Claimant's total Eligible Loss Amount divided by the total Eligible Loss Amounts of all Eligible Claimants.
7. Each Eligible Claimant shall be allocated a Distribution Payment if eligible. An Eligible Claimant's Eligible Loss Amount will be reduced by the amount of any compensation that resulted from the conduct described in the Order in this matter that was received from another source (*e.g.*, arbitration settlement), excluding any FINRA restitution, to the extent known by the Fund Administrator. In no event will an Eligible Claimant receive a Distribution Payment totaling more than his, her or its Eligible Loss Amount.
8. If an Eligible Claimant has a calculated Distribution Payment that is less than \$10.00 in total that Eligible Claimant will not be included in the calculation and the funds will be distributed to other Eligible Claimants whose Distribution Payments are greater than this amount.