

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5781 / July 19, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20401**

**In the Matter of**

**UBS FINANCIAL SERVICES  
INC.**

**Respondent.**

**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**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against UBS Financial Services Inc. (“Respondent” or “UBS”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of UBS Financial Services Inc. (“Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this 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 (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

## Summary

1. This matter concerns UBS's failure to adopt and implement written policies and procedures reasonably designed to prevent unsuitable investments in volatility-linked-exchange-traded products ("ETPs") between January 2016 and January 2018 (the "Relevant Period"). As a result, financial advisers ("FAs") in UBS's discretionary Portfolio Management Program ("PMP") purchased and held one such ETP called iPath S&P 500 VIX Short-Term Futures ETN ("VXX") for their advisory clients for durations that were inconsistent with the purpose of the product, as described in its offering documents, and as described to UBS in a meeting with representatives of the issuer of VXX.

2. Beginning in at least early 2016, certain PMP FAs exercised their discretionary authority to purchase VXX for advisory clients and held the investment for lengthy periods, including hundreds of accounts that held VXX for over a year. VXX is designed to provide exposure to the implied volatility of the S&P 500 by replicating a strategy of continuously maintaining a rolling portfolio of one and two-month futures contracts on the CBOE volatility index (the "VIX"). The constant daily buying and selling of the VIX futures contracts generates roll costs in most market environments. As these roll costs are deducted from VXX's returns, its value was likely to—and, in fact, during the Relevant Period, did—decrease when held for extended periods, even if the VIX remained flat or positive during that period.

3. UBS failed to adopt and implement written policies and procedures that were reasonably designed to prevent the unsuitable use of VXX as a buy-and-hold investment for PMP advisory clients. Although UBS had controls and systems in place to monitor holding period risk for other products, it did not implement similar measures with respect to VXX. Although, UBS adopted a 3% concentration limit on volatility-linked ETPs in PMP accounts, that policy addressed concentration risk and not the length of time VXX was held in an account. Additionally, UBS adopted written policies that required the firm to monitor PMP accounts for compliance with the concentration limit on a daily basis and take escalating actions if an account violated the limit, but UBS failed to implement this system of monitoring and enforcement.

4. During the Relevant Period, approximately 1,882 PMP client accounts held VXX for extended periods, with hundreds of accounts holding VXX for over a year. The increased risk from the extended holding periods resulted in meaningful losses on their VXX investments.

5. In October 2017, UBS made VXX an ineligible holding in PMP accounts. UBS prohibited further purchases of VXX and required that PMP accounts currently holding VXX exit those positions by January 2018.

6. Under the circumstances described above, UBS willfully violated Section 206(4) of the Advisers Act and Advisers Act Rule 206(4)-7.

## **Respondent**

7. UBS Financial Services Inc., a Delaware corporation, is a dual-registered broker-dealer and investment adviser. UBS has been registered with the Commission as a broker-dealer and investment adviser since 1971 and has its principal place of business in Weehawken, New Jersey. It is a subsidiary of UBS Group AG, a publicly traded company located in Switzerland.

## **Background**

### **The VXX Product**

8. VXX, which was listed on the NYSE Arca, Inc. exchange during the Relevant Period, is a volatility-linked, complex, exchange-traded note that offers exposure to futures contracts of specified maturities on the VIX. The VIX attempts to track the expected volatility of the S&P 500, not the price level of the S&P 500 itself. Futures contracts on the VIX allow investors to invest in forward volatility based on their view of the near-future direction of the VIX. The performance of VXX is not linked directly to the VIX but to a separate index that tracks the price of futures contracts on the VIX, the S&P 500 VIX Short-Term Futures Index Total Return (TR) (“Futures Index”). The performance of the Futures Index is based on a hypothetical rolling portfolio of one-month and two-month futures contracts to target a constant weighted average of one month maturity. Thus, the Futures Index does not purport to track or measure implied volatility in the medium or long term, as its name—“Short-Term”—implies. On a daily basis, the Futures Index hypothetically sells futures contracts closest to expiration and buys the next month out to maintain a constant exposure. When the prices are lower in the distant delivery month than in the nearer delivery month, the futures curve is in “backwardation,” and VXX benefits from positive “roll yield.” However, when the price of the distant delivery month is higher, the futures curve is in “contango,” resulting in “negative roll yield.”

9. The VXX prospectus supplement in effect during the Relevant Period made clear that, as a historical matter, the VIX futures market typically resides in contango. The supplement disclosed that the underlying futures index has “not historically exhibited consistent periods of backwardation, and backwardation will most likely not exist at many, if not most times.” The prospectus supplement also explained, “VIX futures have frequently exhibited very high contango in the past, resulting in a significant cost to ‘roll’ the futures. The existence of contango in the futures markets could result in negative ‘roll yields’, which could adversely affect the value of the Index underlying your ETNs and, accordingly, decrease the payment you receive at maturity or upon redemption.”

10. The VXX prospectus supplement in effect during the Relevant Period also warned of the limited upside potential of VXX. Specifically, it stated: “VIX Index has typically reverted over the longer term to a historical mean, and its absolute level has been constrained within a band. It is likely that spot level of the VIX Index will continue to do so in the future, especially when the current economic uncertainty recedes. If this happens, the value of futures contracts on the VIX Index will likely decrease, reflecting the market expectation of reduced volatility in the future, and the potential upside of your investment in your ETNs will correspondingly be limited as a result.”

## **UBS Places Restrictions on Sales to Brokerage Customers**

11. UBS's Exchange Traded Product Review Committee (the "ETP Committee") was responsible for conducting due diligence on ETPs, deciding which ETPs would be allowed for sale on UBS's brokerage platform, monitoring the ETPs on the system, and educating FAs about ETPs. In 2009, the ETP Committee evaluated VXX. In connection with that evaluation, representatives of the issuer of VXX made a presentation to the ETP Committee in November 2009. The VXX issuer representatives advised the ETP Committee that, due to the effects of negative roll yield, it was inappropriate to hold the VXX for extended periods.

12. Following the presentation, the ETP Committee initially permitted VXX to be sold on UBS's brokerage platform, but—in recognition of the product's complexity and the risk of loss when holding the product for an extended period due to negative roll yield—the ETP Committee over time placed increased restrictions on the sales of VXX to brokerage customers. In 2011, the ETP Committee prohibited UBS's brokerage representatives from soliciting VXX entirely. By February 2016, UBS only allowed unsolicited sales of VXX to brokerage customers who had a net worth of at least one million dollars and an aggressive risk profile, and the following year increased the customer net worth minimum to \$10 million.

13. Prior to and during the Relevant Period, representatives of the ETP Committee and UBS's ETF Desk engaged with registered representatives of the UBS broker-dealer and advised UBS brokerage representatives about the risk of negative roll yield and the need to not hold VXX for more than very short periods. For example, in September 2015, an ETP Committee member told a brokerage representative that "there is negative roll yield as the ETF needs to sell shorter-term VIX futures and buy more expensive longer-dated VIX futures on a daily basis. . . . The point here is VXX may be OK for very short-term trades – its [sic] not a buy and hold strategy. By short-term no more than a week." In April 2016, the ETF Desk distributed an "ETF Morning Note" within UBS, which advised that VXX was not an effective way to get exposure to the VIX Index for "any significant period of time," and that it was "down 96.3% over the last 5 years." In the summer of 2016, the ETF Desk stated in another internal publication that VXX is typically "only used on a very short-term basis." In January 2017, an ETF Desk member told a brokerage representative that VXX "is really only meant for a very short term investment and we generally recommend clients stay away from this product unless they have a time horizon of one or two days." That same ETF Desk member told another brokerage representative, "[b]ottom line for me, which I like to reiterate to everyone who calls on VXX, is that it's only meant as an extremely short trading vehicle, not a way to hedge equity products."

## **For Its PMP Advisory Business, UBS Failed to Adopt and Implement Reasonably Designed Policies and Procedures Concerning Volatility-Linked ETPs**

14. Although UBS understood and appreciated the risks of holding VXX for extended periods, as reflected by steps taken for brokerage customers, UBS allowed FAs in the PMP program to purchase VXX for advisory clients without equivalent restrictions.

15. PMP is UBS's managed discretionary account advisory program, and PMP FAs had to meet certain requirements to be accepted into PMP. During the Relevant Period, PMP clients were required to maintain a minimum account value of \$50,000, but there was no minimum net worth or income requirement. PMP FAs offered clients PMP strategies that were approved by PMP management. PMP clients were only permitted in strategies consistent with their risk profile (such as aggressive, moderate or conservative). When a PMP FA wanted to buy or sell a position in a strategy, she submitted a block trade across all of her PMP accounts invested in the strategy. As a general rule, PMP FAs did not discuss individual investment decisions with their clients or supervisors before buying or selling securities. PMP FAs were required to follow the PMP Investment Guidelines when making investment decisions. The PMP Investment Guidelines were a UBS policy that provided limits on the PMP FAs' discretion, such as minimum and maximum concentration amounts.

16. PMP FAs with more than five years of experience were allowed to use their discretion to invest client assets in VXX. UBS did not restrict these FAs' use of VXX to certain strategies or by client risk profile, net worth, or income. Although UBS implemented holding period monitoring and restrictions with respect to another category of complex ETPs, inverse ETFs, UBS did not do so with respect to volatility-linked ETPs such as VXX.

17. Before investing client assets in VXX, PMP FAs were required to complete an online training module called Commodity Futures-Linked Securities. The training module explained the structure of futures-linked securities generally, the importance of futures curves, backwardation and contango, how negative roll yield can impact returns associated with futures-linked securities, and that securities like VXX are generally more suitable for short-term holding periods. The training module used an investment scenario to demonstrate how to make an investment decision relating to futures-linked securities such as the VXX, including the following steps: determine the shape of the futures curve and the investment time horizon, calculate the expected cost associated with negative roll yield over that time horizon, and compare that cost to the anticipated gains associated with the expected increase in the price of the underlying futures.

18. The only other limitation that UBS placed on PMP FAs' discretion with respect to investing in VXX was a provision in the PMP Investment Guidelines that stated that holdings of volatility ETPs in PMP accounts could not exceed 3% of account assets. This system sought only to limit—not prevent—purchases of volatility ETPs that might be unsuitable. As written, the Guidelines did not protect clients from unsuitable investments in VXX beneath the 3% concentration limit. The system for monitoring and enforcing the volatility ETP concentration limit was meant to each day flag violations for review by the FA and branch supervisor, send an email notification if the violation was not resolved in 90 days, and, if the violation was not resolved

in 180 days, terminate the account. As a result, as written, PMP FAs could hold VXX concentrations above the 3% limit for up to six months before account termination.

19. However, UBS did not implement the system for monitoring and enforcing the 3% concentration limit. The system stopped monitoring for VXX when the ETN received a new CUSIP after it underwent a reverse split in October 2012 and UBS did not input the new security identifier into the monitoring system. Thereafter, the system failed to monitor VXX holdings until September 2017. When the problem was fixed in September 2017, the system did not account for days that accounts had already been in violation, but rather began counting days from the date the problem was fixed. During the Relevant Period, UBS lacked any procedure for regularly auditing the system to determine whether it continued to detect violations of the PMP Investment Guidelines. Between January 2016 and August 2017, during which time UBS's system for monitoring and enforcing the 3% concentration limit was not functioning, 38 PMP FAs held excess concentrations of VXX in 637 PMP accounts.

20. During the Relevant Period, UBS failed to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules regarding the suitability of volatility-linked ETPs, such as VXX, as investments for PMP clients. Despite UBS's awareness of the risks associated with such products, including the predominance of contango and negative roll yield, UBS's policies or procedures were not reasonably designed to address one of the main risks of VXX, holding period risk. UBS also failed to adequately implement existing policies and procedures that would have limited the downside risk associated with unsuitable investments in volatility-linked ETPs, including VXX.

#### **Certain PMP FAs Purchased and Held VXX for Extended Periods in Advisory Client Accounts**

21. During the Relevant Period, certain PMP FAs at UBS bought VXX for advisory clients and held it in discretionary managed accounts. Some of the affected accounts were retirement accounts.

22. Contrary to the warnings in the prospectus about the predominance of contango in VIX futures markets and the effect of negative roll yield, and contrary to similar warnings that UBS's ETP Committee received in November 2009 from the issuer of VXX, these PMP FAs held VXX in client accounts for long periods. Approximately 1,882 PMP accounts held VXX for extended periods, including hundreds of accounts that held VXX for over a year. These accounts lost a substantial percentage—in many instances over 75% —of the value of their VXX investments.

23. Certain PMP FAs had a flawed understanding of the appropriate use of VXX and the associated risks. For example, several PMP FAs stated that they viewed VXX as a hedge against an anticipated period of equity market volatility or a market downturn. They did not identify an investment time horizon, or take sufficient steps to understand whether negative roll yield would limit or eliminate any potential investment gains, as demonstrated in the Commodity

Futures-Linked Securities training module. Other than the presidential election of 2016, none of the FAs testified that they anticipated a market correction based on a specific, near-term event.

24. As a result, these PMP FAs could not make a reasonable determination as to whether VXX was a suitable investment for their clients. In particular, these PMP FAs could not determine whether it was reasonable to hold VXX for extended periods as a hedge against a potential market downturn or other unpredictable future events.

### **UBS Prohibits PMP FAs from Investing in VXX**

25. In September and October 2017, members of UBS's ETF Desk, PMP management, and the branch supervision group met and discussed whether VXX should be made ineligible for purchase by PMP FAs because they perceived that certain PMP FAs were not using VXX properly. In October 2017, the ETP Committee recommended that VXX should be made ineligible for purchase by PMP FAs. Shortly thereafter, the governance committee that oversees UBS's advisory programs accepted the ETP Committee's recommendation, and VXX was made ineligible for purchase by PMP FAs. UBS provided PMP FAs with written notice of the policy change on October 31, 2017, and informed them that they had to exit any current VXX position by January 31, 2018.

### **UBS's Violations**

26. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and its rules. In failing to adopt such reasonably designed written policies and procedures directed at volatility-linked products, and in failing to implement its existing policies and procedures, UBS willfully<sup>2</sup> violated Section 206(4) of the Advisers Act and Advisers Act Rule 206(4)-7.

### **Remedial Efforts**

27. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. In particular, UBS voluntarily undertook a review of volatility-linked ETPs, including VXX, and, from that review, decided to remove VXX from the

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section, 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

PMP platform. This policy change was fully implemented by the end of January 2018, prior to being contacted by Commission staff.

### **Disgorgement and Civil Penalties**

28. The disgorgement and prejudgment interest ordered in paragraph IV.C.1. is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors may be transferred by the Commission to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **IV.**

In view of the foregoing, the Commission deems it appropriate, and in the public interest, to impose the sanctions agreed to in UBS's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Advisers Act Rule 206(4)-7;

B. Respondent is censured;

C. Respondent shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$8,112,274 as follows:

1. Respondent shall pay disgorgement of \$96,344 and prejudgment interest of \$15,930, consistent with the provisions of Subsection C;
2. Respondent shall pay a civil monetary penalty in the amount of \$8,000,000, consistent with the provisions of this Subsection C;
3. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected client accounts. Amounts ordered to be paid as civil monetary penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the

Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

4. Within ten (10) days of the issuance of this Order, Respondent shall deposit \$8,112,274 (the “Distribution Fund” or “Fair Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Distribution Fund shall bear the name and the taxpayer identification number of the Distribution Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.
5. Respondent shall be responsible for administering the Distribution Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.
6. Respondent shall distribute from the Distribution Fund an amount representing a portion of the respective loss incurred from investments in VXX to each PMP client of UBS who incurred a loss as a result of investments made in VXX between January 1, 2016, and January 31, 2018 pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by Commission staff in accordance with this Subsection C. The Calculation may be subject to a *de minimis* threshold. No portion of the Distribution Fund shall be paid to any affected client account in which Respondent, any of its affiliates, or any of the current or former officers or directors of Respondent or any affiliate, any of its FAs who recommended buy-and-hold investments in volatility-linked ETPs, or any family members of these persons, has a financial interest. If the amount deposited into the Distribution Fund is not sufficient to pay the full amount of the losses determined to be payable to the affected clients, then each eligible affected client will receive an amount that the client’s losses bears in proportion to the aggregate losses of all eligible affected clients.
7. Respondent shall, within ninety (90) days from the date of this Order, submit a proposed Calculation to Commission staff for review and approval. At or around the time of submission of the proposed Distribution Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a conference call with Commission staff to explain the methodology used in

preparing the proposed Calculations and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide Commission staff such additional information and supporting documentation as Commission staff may request for the purpose of its review. In the event of one or more objections by Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of Commission staff or additional information or supporting documentation with ten (10) days of the date that Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

8. Respondent shall, within thirty (30) days of the written approval of the Calculation by Commission staff, submit a payment file (the "Payment File") for review and acceptance by Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid.
9. Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph 13 of this Subsection C. Respondent shall notify Commission staff of the dates and the amount paid in the initial distribution.
10. If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any other factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 once the distribution of funds is complete and before the final accounting provided for in Paragraph 12 of this Subsection C is submitted to Commission staff. Payment must be made in one of the following ways:
  - a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request.
  - b. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
  - c. Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying UBS as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Celia Moore, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch St., 24<sup>th</sup> Fl., Boston, MA 02110.

11. A Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Distribution Fund’s status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns of the Distribution Fund; (2) information return reporting regarding payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (“FATCA”). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by Respondent and shall not be paid out of the Distribution Fund.
12. Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to affected investors in accordance with the Calculation approved by Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to, Celia Moore, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch St., 24<sup>th</sup> Fl., Boston, MA 02110. Respondent shall provide any and all supporting documentation for the accounting and certification to Commission staff upon its request and shall cooperate with any

additional requests by Commission staff in connection with the accounting and certification.

13. Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

By the Commission

Vanessa A. Countryman  
Secretary