

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21295

In the Matter of	:	
	:	
Centaurus Financial, Inc., Ricky A.	:	PROPOSED PLAN OF
Mantei, and Atul Makharia	:	DISTRIBUTION
	:	
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 Centaurus Financial, Inc. (“CFI”), a California corporation with its principal place of business in Anaheim, California; Ricky A. Mantei (“Mantei”), a registered representative of CFI; and Atul Makharia (“Makharia”), a supervisory principal associated with CFI (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’ sale of complex variable interest rate structured products (“VRSP”) to ninety-four retail customers for whom they knew, or reasonably should have known, such investments were unsuitable in light of each of the specific customers’ financial situation and needs. 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.

¹ See Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 11153 (Feb. 6, 2023). (the “Order”).

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses based on the sales commissions and sales credits they paid in connection with purchasing VRSP from the Respondents between June 1, 2016 and July 31, 2019 (the “Relevant Period”).

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 February 6, 2023, 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 between June 2016 and July 2019, Makharia and seven other registered representatives from CFI's Lexington, South Carolina branch office (collectively, the “CFI RRs”) recommended the sale of complex VRSP to ninety-four retail customers for whom they knew, or reasonably should have known, such investments were unsuitable in light of each of the specific customers’ financial situation and needs. The Commission further found that CFI and Mantei, the branch manager and owner of CFI’s Lexington, South Carolina branch office, also failed reasonably to supervise the CFI RRs, and CFI failed to make and keep certain required records relating to certain customer accounts. The Commission ordered CFI to pay disgorgement of \$4,876.00, prejudgment interest of \$623.00, and a civil money penalty of \$750,000.00; Mantei to pay disgorgement of \$92,650.00, prejudgment interest of \$11,842.00, and a civil money penalty of \$206,000.00; and Makharia to pay a civil money penalty in the amount of \$35,000.00, for a collective total of \$1,100,991.00 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 collected, along with the disgorgement and interest collected, can be distributed to harmed investors.

7. The Respondents have paid in full. The Fair Fund has been deposited in a Commission-designated account at the United States Department of the Treasury, and any accrued interest will be added to the Fair Fund.

III. DEFINITIONS

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

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

9. “**Certification Form**” means the form that will be emailed or mailed to each

Preliminary Claimant in order to confirm his, her, or its calculated Recognized Loss, the name and mailing address of the payee to which a Distribution Payment should be issued, if applicable. The Certification Form may be accompanied by tax forms, as required, relating to the tax treatment of any distribution.

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

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

12. **“Excluded Party”** shall mean: (a) the Respondents, and Respondents’ officers and directors, employees, promoters, independent contractors, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as the Fund Administrator; and (c) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

13. **“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.

14. **“Final Determination Notice”** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice by returning the Certification Form and/or any other requested documents, as described in paragraph 46 notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Fund Administrator will not send a Final Determination Notice to a Preliminary Claimant, if his, her, or its Plan Notice was returned as “undeliverable.” The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim.

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

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

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

18. **“Plan Notice”** means a written notice from the Fund Administrator to each

Preliminary Claimant regarding the Commission’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission’s website and instructions for requesting a copy of the Plan; a Certification Form, along with specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its 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 as a resource for additional information or to contact with questions regarding the distribution.

19. **“Plan of Allocation”** means the methodology used by the Fund Administrator to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

20. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the Commission staff during its investigation, who may have suffered a loss as a result of the sales commissions and sales credits they paid in connection with purchasing VRSPs from the Respondents during the Relevant Period.

21. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

22. **“Relevant Period”** is between June 1, 2016 and July 31, 2019, inclusive.

23. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator’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

24. On February 23, 2024, 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 2022-2024 Engagement Letter Agreement with the Commission.³

25. 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

² See Order Appointing Tax Administrator, Exchange Rel. No. 34-99590 (Feb. 23, 2024)

³ See Omnibus Order Directing the Engagement of Two Tax Administrators for Appointment on a Case-By-Case Basis in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 94845 (May 4, 2022).

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.

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

V. FUND ADMINISTRATOR

27. A fund administrator (the “Fund Administrator”) will be appointed to administer the Plan in accordance with Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a).

28. The Fund Administrator will be required to obtain a bond in accordance with Rule 1105(c) of the Commission’s Rules, 17 C.F.R. § 201.1105(c). Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

29. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries regarding the Plan; disseminating the Plan Notice and Certification Form; preparing accountings; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

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

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

32. When administering this Plan, the Fund Administrator, and/or each of its designees, agents and assigns, may rely on: all applicable law; orders issued by the Commission, including orders issued by delegated authority; orders issued by an administrative law judge, if

any, appointed in this proceeding; and any records, including records containing investor information, provided by Commission staff.

33. The Fund Administrator is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third parties shall be deemed to be agents of the Fund Administrator under this Plan.

34. The Fund Administrator will be entitled to payment from the Fair Fund of reasonable fees and expenses, including the bond premium, incurred in the performance of its duties (including any such fees and expenses incurred by agents, consultants or third parties retained by the Fund Administrator in furtherance of its duties).

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

35. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of the sales commissions and sales credits they paid in connection with purchasing VRSPs from the Respondents during the Relevant Period.

Procedures for Locating and Notifying Preliminary Claimants

36. Within 210 days of Commission approval of the Plan, the Fund Administrator will:

- (a) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan, include a copy of the Plan Notice and Certification Form, and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Preliminary Claimants;
- (b) Establish and maintain a toll-free telephone number for Preliminary Claimants to call and speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund;
- (c) Establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website;
- (d) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Fund Administrator, including their last known physical and email addresses;

- (e) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date; and
- (f) Send a Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

37. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website, any communication with investors, and any scripts used in connection with communications with investors.

Undeliverable Mail

38. The Fund Administrator will attempt to locate any Preliminary Claimant whose mailing is returned as undeliverable by the U.S. Postal Service or otherwise, including an advanced address search using commercially available resources, if feasible, and will document all such efforts. If another address is obtained, the Fund Administrator will then resend it to the Preliminary Claimant's new address within 30 days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

39. The Fund Administrator, with Commission staff approval, may engage a third party search firm to conduct more rigorous searches for Persons whose mailings are returned as undeliverable.

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.

Procedures to Request Plan Notice

41. Any Person who does not receive a Plan Notice, as described in paragraph 36(f), 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 within 225 days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The Fund Administrator will send the Person a Plan Notice within 15 days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

Certification Requirement by Preliminary Claimants and Failure to Respond to Plan Notice

42. In order to maintain classification as a Preliminary Claimant, the Certification Form must be signed by the Preliminary Claimant under penalty of perjury under the laws of the United States and returned to the Fund Administrator by the deadline stated in the Plan Notice. The Certification Form must be executed by the Preliminary Claimant, unless the Fund Administrator accepts such Certification Form from a Person authorized to act on the Preliminary Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems necessary.

43. The Fund Administrator will review all Certification Forms. Each Preliminary Claimant will have the burden of proof to establish their identity as a Preliminary Claimant, or his, her, or its successor. The Fund Administrator will have the right to request, and the Preliminary Claimant will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

44. If a Preliminary Claimant fails to return the Certification Form and/or any requested tax forms, as requested in the Plan Notice, within 45 days from the initial mailing of the Plan Notice, the Fund Administrator will make no fewer than 2 attempts to contact the Preliminary Claimant by telephone or email, if known to the Fund Administrator. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Dispute Process

45. Disputes will be limited to the Recognized Loss amount. Within 45 days of the initial mailing of the Plan Notice, the Fund Administrator must receive a written communication detailing any dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Final Determination Notices

46. Within 75 days of the initial mailing of the Plan Notices, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 45 above, notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 42 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

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

48. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant's distribution amount, in accordance with the Plan of Allocation, calculates to a distribution amount less than \$10.00, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00. All Eligible Claimants whose Recognized Loss calculates to a distribution amount equal to or greater than \$10.00 will be deemed a Payee and receive a Distribution Payment.

Establishment of a Reserve

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

50. 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 69 below.

Preparation of the Payment File

51. Within 60 days following the date the Fund Administrator has mailed all Final Determination Notices, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the percentage of the Payee's Recognized Loss being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage to include all prior disbursements; (e) the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

52. Prior to the disbursement of funds from the Net Available Fair Fund, the Fund Administrator will establish an escrow account (the "Escrow Account") with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. § 208.43 and that is not unacceptable to the Commission staff (the

“Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff.

53. The Fund Administrator, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (e.g. controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and both shall be named, and records maintained, in accordance with the Escrow Agreement.

54. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the “Escrow Property”) shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees and Administrative Costs, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

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

56. The Fund Administrator, in consultation with the Commission staff, shall work with the Bank on an ongoing basis to deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments and tax implications; and to determine an allocation of funds between the Escrow and Distribution Account.

57. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Fund Administrator, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

Distribution of the Fair Fund

58. Upon the Commission’s staff’s receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will seek an order from the Commission pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 210.1101(b)(6), to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission Order.

59. Upon issuance of an order to disburse, the Commission staff will direct the

transfer of funds in accordance with the Payee List to the Bank. The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect electronic payments within 10 business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

60. All Distribution Payments will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of 180 days from the date of issuance. Reissuance of a check must be requested before the stale date, and such request is governed by paragraph 64.

61. 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; however, any backup withholding required under IRC § 3406(a) and the regulations promulgated thereunder, or withholding required with respect to nonresident aliens ("NRAs") under Chapter 3 of the IRC, or FATCA-subject Payees under Chapter 4 of the IRC, will be withheld as required from the Distribution Payment and remitted to the Internal Revenue Service on the Payee's behalf; (c) a statement that checks will be void and cannot be reissued after 180 days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator and provided to the Commission staff for review and approval.

62. 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; Handing of Returned or Uncashed Checks; and Reissues

63. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable." If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If, within 120 days after the initial mailing of the distribution check, new address information for the Payee is not available or if the distribution check is returned again, the Fund Administrator will void the distribution check, and 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.

64. The Fund Administrator will reissue checks to Payees upon the receipt of a valid, written request from the Payee 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 Fund Administrator will request, and must

receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of 180 days from issuance of the original check or 60 days from the reissuance, and in no event will a check be reissued after 180 days from the date of the original issuance without the approval of Commission staff.

65. The Fund Administrator 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 Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator 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.

66. The Fund Administrator will make reasonable efforts to contact Payees who have failed to negotiate their Distribution Payment check 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. If a Distribution Payment remains uncashed after the stale date the Fund Administrator will instruct the Bank to issue a stop payment on the check. The Fund Administrator, 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.

Receipt of Additional Funds

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

Disposition of Undistributed Funds

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

69. 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.

70. Once the Fund Administrator, in consultation with the Commission staff, deems

further distribution of the Fair Fund to investors infeasible, the Fund Administrator will direct any uncashed Distribution Payments to be voided, and return any remaining funds disbursed to the Bank in paragraph 59 above, to the Commission to be added to the Residual.

71. All funds remaining in the Residual that are infeasible to distribute to investors will be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), after the final accounting is approved by the Commission. Returning such money to the Respondents would be inconsistent with the equitable principle that no Person should profit from his wrongdoing. Therefore, in these circumstances distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

Administrative Costs

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

Accountings

73. In accordance with Rule 1105(f) of the Commission’s Rules, the Fund Administrator shall provide to the Commission staff a progress report and a quarterly account statement in a format to be provided by Commission staff, within 45 days of the Commission’s approval of the Plan, and shall provide to Commission staff additional reports and quarterly account statements within 10 days after the end of every calendar quarter. Such progress reports shall inform the Commission staff of the activities and status of the Fair Fund during the reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Fair Fund, including among other things, an interim accounting of all monies in the Fair Fund.

74. When the final distribution is completed, the Fund Administrator shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Fund Administrator shall make arrangement for the final payment of all Administrative Costs, and submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan in a format provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

Wind-down and Document Retention

75. 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 months after the transfer of any remaining funds to the Commission, or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

76. The Fund Administrator will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable

for the duration of retention. Pursuant to the Commission staff's direction, the Fund Administrator will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

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

78. 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; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Fair Fund has been returned to the Commission for transfer to U.S. Treasury.

VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT

79. 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 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. 3-21295 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 certain investors based on the sales commissions and sales credits they paid in connection with purchasing Variable Interest Rate Structured Products (“VRSP”) from the Respondents between June 1, 2016 and July 31, 2019, inclusive (the “Relevant Period”). Investors who did not purchase VRSPs from the Respondents during the Relevant Period, or investors for whom the VRSPs were not determined to be unsuitable, are ineligible to recover under this Plan. Based upon records obtained by the Commission during its investigation, the Fund Administrator has identified those investors, or their lawful successors, who may have suffered a loss as a result of the sales commissions and sales credits they paid in connection with purchasing VRSPs from the Respondents during the Relevant Period (the “Preliminary Claimants”).

I. Calculating Recognized Loss

The Fund Administrator will calculate loss (“Recognized Loss”) as the sum of sales commissions and sales credits paid by each Preliminary Claimant in connection with purchases of VRSP from the Respondents during the Relevant Period.

II. Becoming an Eligible Claimant

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

III. Allocation of Funds

If the Net Available Fair Fund, as defined in the Plan, is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its Recognized Loss, *plus* any “Reasonable Interest” awarded. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata* Percentage” of the Net Available Fair Fund. In either case, the distribution amount will be subject to the “Offset for Prior Recovery” and “Minimum Distribution Amount.”

A. Calculating an Eligible Claimant’s *Pro-Rata* Percentage

This computation is intended to measure Eligible Claimants’ Recognized Losses against one another. Each Eligible Claimant’s *Pro-Rata* Percentage will be calculated as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

B. Offset for Prior Recovery

To avoid payment of a windfall, an Eligible Claimant's distribution amount will be no larger than his, her, or its Recognized Loss *minus* the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator ("Prior Recovery"), *plus* any Reasonable Interest awarded. That is, the distribution amount will be capped at the Recognized Loss *less* the Prior Recovery, *plus* any Reasonable Interest awarded.

C. Reasonable Interest

If the Net Available Fair Fund exceeds the amount necessary to pay all Eligible Claimants their Recognized Loss (*minus* any Prior Recovery) in full, the Fund Administrator, in consultation with the Commission staff, may include interest in the distribution amount to compensate for the time value of money. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, Reasonable Interest will awarded on a *pro-rata* basis from the excess funds.

D. Minimum Distribution Amount

The Minimum Distribution Amount will be \$10.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible and his, her, or its distribution amount may be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

E. Payee and Distribution Payment

An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee, and will receive a Distribution Payment equal to his, her, or its calculated distribution amount.