UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 90411 / November 13, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5628 / November 13, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20151

In the Matter of **AMERICAN PORTFOLIOS FINANCIAL SERVICES, INC. and AMERICAN PORTFOLIOS ADVISORS, INC.** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

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 Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against American Portfolios Financial Services, Inc. ("APFS") and American Portfolios Advisors, Inc. ("APA") (collectively, the "Respondents").

II.

In anticipation of the institution of these proceedings, the Respondents have submitted Offers of Settlement (the "Offers") 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 them and the subject matter of these proceedings, which are admitted, and Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

This matter concerns APFS's failure reasonably to supervise certain APFS registered representatives who recommended their brokerage customers buy and hold a complex exchange-traded product ("ETP") without a reasonable basis for believing the recommendation was suitable for their customers. Those customers lost significant portions of their investment. The registered representatives did not understand the product, misrepresented its risks and recommended it for a purpose inconsistent with that described in the product's offering materials. APFS failed reasonably to implement its supervisory policies and procedures to address whether the registered representatives understood the product sufficiently to be able to form a reasonable basis to recommend that retail brokerage customers buy and hold the ETP. In addition, APA failed to adopt and implement policies and procedures regarding the suitability of complex ETPs for advisory clients.

Beginning in at least January 2016, certain APFS registered representatives believed the financial markets could experience volatility and, possibly, decline over a period of months or longer. These representatives recommended that their brokerage customers buy and hold a security called iPath S&P 500 VIX Short–Term Futures ETN ("VXX"). VXX attempts to track the implied volatility of the S&P 500 Index (the "S&P 500") through the use of short-term futures contracts. Moreover, as disclosed in the VXX prospectus, the constant daily hypothetical purchase and sale of these contracts creates roll costs in most instances. As these roll costs are deducted from VXX's returns, its value was likely to—and, in fact did—decrease when held longer than very short periods, even if the CBOE volatility index (the "VIX") was flat or positive from the start to end of that period. The registered representatives either ignored or did not understand this information, and they did not conduct a reasonable investigation prior to making their recommendations. As a result, the representatives lacked a reasonable basis for their recommendations, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (the "Securities Act"). Between January 2016 and February 2020 (the "Relevant Period"), approximately 60 of those representatives' brokerage customers' accounts purchased VXX after the registered representatives recommended it and held

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

it, on average, for just under a year. These accounts lost more than 42% percent of the amounts they invested in VXX pursuant to the representatives' recommendations.

Throughout the Relevant Period, APFS had policies and procedures concerning suitability of recommendations and complex products, including ETPs like VXX. The policies and procedures direct that registered representatives understand the potential risks and rewards of a recommendation, as well as have a reasonable basis for believing a recommended transaction is suitable for a customer. The policies and procedures also make clear that APFS was expected to subject complex products to a new product review process and was expected to provide registered representatives and supervisors training regarding such products, including the relevant suitability standards. However, as of January 2016, and throughout the Relevant Period, APFS did not subject VXX to a review process, nor did it identify VXX as complex such that registered representatives and supervisors could properly assess suitability and other issues. Moreover, and significantly, APFS provided no training regarding VXX.

Furthermore, as of January 2016, and throughout the Relevant Period, APA failed to adopt and implement policies and procedures reasonably designed to prevent unsuitable recommendations of complex ETPs. For example, APA did not have policies and procedures that would allow it to determine whether its investment adviser representatives were fulfilling their fiduciary obligation to provide only suitable investment advice when they recommended that their retail clients buy and hold VXX. The APA compliance manual did not contain policies and procedures specific to complex products, nor did it provide for any review procedures concerning such recommendations or training regarding such products, even though APA was aware that certain of its investment adviser representatives were recommending VXX to their retail clients.

Under the circumstances described above, APFS failed reasonably to supervise registered representatives with respect to their unsuitable recommendations to brokerage customers pertaining to VXX within the meaning of Section 15(b)(4)(E) of the Exchange Act. Additionally, APA violated Section 206(4) and Rule 206(4)-7 under the Advisers Act.

Respondents

1. APFS, a Delaware corporation, has been registered with the Commission as a broker-dealer since 1987. APFS's main offices are in Holbrook, New York. It has more than 800 registered representatives and more than 435 branch locations across the country. It is wholly owned by American Portfolios Holdings, Inc.

2. APA, a Delaware corporation, has been registered with the Commission as an investment adviser since 2002. APA's main offices are in Holbrook, New York. It has approximately 55 registered employees that perform investment advisory functions and more than 88 branch locations across the country. All of its registered investment adviser representatives are also registered representatives of APFS. It is wholly owned by American Portfolios Holdings, Inc.

Background

The VXX Product

3. VXX, which was listed on the NYSE Arca, Inc. exchange during the Relevant Period, is a volatility-linked, complex exchange-traded note ("ETN") 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 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. The Futures Index, on a hypothetical basis, daily sells futures contracts closest to expiration and buys the next month out. When the longer-term contract costs less than the nearer-term contract, the market is in "backwardation," and the VXX benefits from "roll yield," which is a positive return. However, when the longer-term contract costs more, the market is in "contango," resulting in negative roll yield.

4. 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 "VIX futures have frequently exhibited very high contango in the past, resulting in a significant cost to 'roll' the futures." As a result, the levels of the Futures Index may experience significant declines as a result of these roll costs, especially over a longer period. The VIX index will perform differently than the Futures Index and in certain cases may have positive performance during periods while the Futures Index is experiencing poor performance. In turn, an investment in VXX may experience a significant decline in value over time, the risk of which increases the longer that VXX is held.

5. 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."

Certain APFS Registered Representatives Recommended Retail Brokerage Customers Buy and Hold VXX Without a Reasonable Basis

6. Beginning in January 2016, certain APFS registered representatives recommended that brokerage customers buy and hold VXX, in most cases, using a small percentage of their overall portfolios.

7. These APFS registered representatives had a flawed understanding—and thus a flawed investment philosophy—regarding VXX. They recommended VXX because media commentators and others predicted that political events, including the upcoming general election, would generate volatility and fear and, as a possible result, declines in the market. The commentators thus recommended VXX as a hedge against a downturn in the market. The representatives performed some general internet research and reviewed the VXX prospectus, but ignored or did not understand information warning against holding VXX for long periods of time. As a result, they did not understand the product.

8. Because these APFS registered representatives failed reasonably to investigate VXX, they did not understand how VXX works, the risks inherent in investing in VXX, or how certain features of VXX could affect their investment plan, particularly as a buy-and-hold investment. Among other things, they failed to understand that VXX's performance was tied to an index tracking the daily performance of futures contracts and that the costs of "rolling" the relevant futures contracts could drive down the value of VXX over time, even if the VIX was flat or positive from the start to end of that period.

9. In particular, these APFS registered representatives advised their customers that VXX would operate variously as a hedge or insurance or diversification against a downturn in the market. Given that the Futures Index frequently exhibited contango both historically and during the Relevant Period, it was not reasonable to hold VXX for extended periods as a hedge against a potential market downturn. VXX was only suitable for a very short investment horizon. The relationship between the level of the VIX and the Futures Index will begin to break down as the length of an investor's holding period increases, even within the course of a single index business day. The relationship between the level of the Futures Index and the value of VXX will also break down as the length of an investor's holding period increases due to the effect of accrued fees. The long term expected value of VXX is zero. If an investor holds VXX as a long term investment, it is likely that they will lose all or a substantial portion of their investment.

10. Moreover, contrary to the warnings in the prospectus about the effect of contango and negative roll yield, the APFS representatives recommended that retail customers buy and hold VXX in their brokerage accounts for an indefinite period of time but failed to inform their customers of the specific potential risk of investing in VXX on a buy-and-hold basis. At the time they made these recommendations, the representatives planned for their customers to hold VXX and did not have in mind a particular time or price at which they would sell. On average, their customers held VXX for almost a year. The representatives did not have a reasonable basis for recommending that their customers buy and hold VXX in this manner. Moreover, these APFS representatives did not talk to their customers about the length of their planned holding period, nor why they believed VXX was suitable for an indefinite holding period notwithstanding the disclosures in the offering materials.

11. These APFS representatives did not form a reasonable basis to believe that buying and holding VXX was a suitable recommendation for their retail customers. Moreover, they did not understand the product and thus negligently misrepresented the risks and characteristics of VXX to their customers. As a result, the APFS representatives made unsuitable recommendations, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

APFS Failed Reasonably to Supervise its Registered Representatives Concerning Complex ETPs

12. During the Relevant Period, APFS's registered representatives were associated persons and were located in branch offices around the country.

13. APFS had procedures, but failed to implement them effectively in order to supervise its registered representatives in their recommendations of complex ETPs throughout the Relevant Period. As of January 2016 and throughout the Relevant Period, APFS's policies and procedures required the representatives to have a reasonable basis for believing a recommended strategy or transaction was suitable for their customers and required them to conduct reasonable diligence to understand the potential risks and rewards associated with a recommended security. The policies and procedures further required that supervisors review transactions daily, review accounts monthly, and review trade orders for suitability.

14. As of January 2016 and throughout the Relevant Period, APFS also maintained policies and procedures concerning "Complex Products," which required more attention from supervisors when reviewing transactions. The policies and procedures gave examples of complex products (including ETPs that offer exposure to market volatility, such as VXX) and provided information about ETNs. In addition to reviewing orders for suitability as described above, the procedures directed that new complex products be subject to a "product review process."

15. Throughout the Relevant Period, APFS supervisors reviewed dozens of transactions on a daily basis. They were mainly focused on—and tasked to look for—indications of churning, and alternative products with high fees and potential for abuse (products not traded on an exchange, such as, variable annuities, and private placements). Supervisors generally understood that VXX was an ETN but knew little beyond that. The APFS trading system did not flag VXX as a complex product or as a security that might require additional scrutiny or documentation. As a result, supervisors rarely, if ever, discussed the suitability of VXX transactions with registered representatives, nor did they know whether the representatives understood VXX or how long customers held the positions.

16. Throughout the Relevant Period, APFS policies and procedures specified the product review process would be conducted by the New Product Committee before complex products could be sold by APFS representatives. However, the New Product Committee merely reviewed new marketing and sales relationships (e.g., wholesaling a new mutual fund complex) and products which were not traded on exchanges or which posed special risks such as high-fees or the potential for churning. It did not review VXX.

17. As of January 2016 and throughout the Relevant Period, APFS's policies and procedures required that representatives understand the features and characteristics of the product they recommended and specified that it was the representative's obligation to obtain further information from his or her supervisor before recommending a product. The policies and procedures also stated the firm would provide training for all products, including ones deemed complex. However, APFS took no steps to ensure, verify or test that its representatives and supervisors understood VXX and its risks before allowing it to be sold. APFS also failed to offer training regarding VXX.

18. In February 2016, APFS amended its policies and procedures to prohibit new sales of levered and inverse ETPs noting they were designed to achieve their results on a daily basis and were subject to a "compounding" effect which caused them to deviate from the underlying index over the long term. APFS did not apply this policy to VXX because it was not identified as inverse (it followed the Futures Index) or levered. This policy was in effect for the rest of the Relevant Period.

19. The recommendations to buy and hold VXX subjected retail customers to significant risk. Many lost nearly their entire investment in VXX. In total, 422 APFS retail accounts lost money from the VXX investments during the Relevant Period. On average, they held VXX in their accounts for 4 months with some holding VXX for up to 22 months.

APA Failed to Adopt and Implement Policies and Procedures Concerning Complex Products

20. APA maintained a compliance manual (the "Manual") for its investment adviser representatives. Throughout the Relevant Period, APA failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules regarding the suitability of recommending investments in complex ETPs for retail advisory clients in light of their investment objectives, risk tolerance, and financial condition. Additionally, APA failed to dedicate adequate resources to the training of investment adviser representatives and their supervisors concerning complex ETPs even though it knew certain investment adviser representatives were recommending that their retail clients buy and hold VXX for extended periods.

21. APA's policies and procedures were less detailed than the APFS policies and procedures discussed above. Like APFS policies and procedures, the Manual required investment adviser representatives to "[t]horoughly understand the security or financial product being recommended by reviewing and considering information and data from reliable sources supporting the recommendation" and to "[m]ake known to the client both the positives and negatives of a specific investment recommendation."

22. While all APA investment adviser representatives were subject to APFS' policies and procedures, APA's Manual however, suffered from several material deficiencies. It contained no policies and procedures regarding complex products other than ETFs; no training requirements for ETPs; no provisions mandating a process by which the firm reviews or approves new products;

and no procedures by which the firm could identify and track holding periods. APA also had no policies and procedures for documenting suitability assessments, no process to track holding periods, and no process for identifying products that posed special risks.

23. The failure to adopt and implement reasonably designed compliance policies and procedures subjected retail advisory clients to significant risk. In all, 62 APA retail advisory accounts invested in VXX lost a portion of their investment in the product during the Relevant Period. On average, APA advisory clients held VXX in their accounts for just under a month with some holding VXX for up to 17 months.

Violations and Supervisory Failures

24. Section 15(b)(4)(E) of the Exchange Act provides that the Commission may sanction a registered broker-dealer for failing reasonably to supervise, with a view to preventing violations of the federal securities laws, another person subject to its supervision who commits such a violation. As a result of the conduct described above, pursuant to Exchange Act Section 15(b)(4)(E), APFS failed reasonably to supervise certain APFS registered representatives with a view to preventing and detecting their violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. If APFS had reasonably implemented its policies and procedures with respect to complex ETPs, APFS could have prevented and detected the brokerage representatives' violations.

25. Section 206(4) of and Rule 206(4)-7 under the Advisers Act require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules thereunder. As a result of the conduct described above, APA willfully[2] violated Section 206(4) and Rule 206(4)-7.

Remedial Efforts

26. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. In

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[2] "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).

particular, on February 2020, Respondents enhanced supervisory policies and procedures to restrict the sales of complex ETPs, including volatility–linked ETNs, such as VXX, from retail brokerage and advisory accounts.

IV.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

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

B. Respondent APFS is censured for failing reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Exchange Act.

C. Respondent APA is censured for its violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

D. Respondents APFS and APA shall pay a total of $653,072 as follows:

i. Respondent APFS shall pay disgorgement of $2,588 and prejudgment interest of $484, consistent with the provisions of this Subsection D.

ii. Respondents APFS and APA, jointly and severally, shall pay a civil monetary penalty in the amount of $650,000, consistent with the provisions of this Subsection D.

iii. 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 investors' accounts. Amounts ordered to be paid as civil money 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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.

iv. Within 10 days of the issuance of this Order, Respondents shall deposit $653,072 (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. 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] or 31 U.S.C. § 3717.

v. Respondents shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.

vi. Respondents shall pay from the Fair Fund an amount representing a portion of the respective loss incurred from the investment of VXX to each customer and client of APFS and APA ("Qualified Investor") who incurred a loss as a result of solicited investments made in VXX between January 1, 2016 and February 28, 2020 plus reasonable interest at the Internal Revenue Service's rate to calculate underpayment penalties compounded quarter from the date of the purchase to February 28, 2020, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection D. No portion of the Fair Fund shall be paid to any affected investor account in which Respondents, or any of its current or former officers or directors, or its representatives who recommended VXX, or their family members, has or had a financial interest.

vii. Respondents shall, within 90 days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondents, along with any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution, shall make themselves available, and shall require any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondents also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event one or more objections by the Commission staff to Respondents' proposed Calculation or

any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that the Commission staff notifies Respondents of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection D.

viii. After the Calculation has been approved by the Commission staff, Respondents shall submit a payment file (the "Payment File") within thirty (30) days for review and acceptance by the Commission staff demonstrating the application of the Calculation methodology to each Qualified Investor. The Payment File should identify, at a minimum, (1) the name of each Qualified Investor; (2) the exact amount of the payment to be made; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid.

ix. Respondents shall complete the disbursement of all amounts payable to Qualified Investor accounts or, if the Qualified Investor no longer has an account with the Respondents, to the Qualified Investor, within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xiv of this Subsection D. Respondents shall notify the Commission staff of the dates and the amount paid in the initial distribution.

x. After the Commission accepts the Payment File, but before disbursement, Respondents shall notify each Qualified Investor of the settlement terms of this Order by sending a copy of this Order to each Qualified Investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

xi. If Respondents are unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate a Qualified Investor or a beneficial owner of an affected account or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for further disposition as approved by the Commission. Payment must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

2. Respondents may make direct payment from a bank account via Pay.gov through the SEC website at https://www.sec.gov/paymentoptions; or

3. Respondents 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 APFS and APA as Respondents 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 Jeffrey P. Weiss, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010.

xii. The Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondents shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act and 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 Fair Fund.

xiii. Within 150 days after Respondents complete the disbursement of all amounts payable to Qualified Investors, Respondents shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection D. The Respondents shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (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; and (7) an affirmation that Respondents have made payments from the Fair Fund to Qualified Investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondents and the file number of these proceedings to Jeffrey P. Weiss, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-6010. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

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

By the Commission.

Vanessa A. Countryman
Secretary