

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18527

In the Matter of

DEVERE USA, INC.,

Respondent.

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MODIFIED PLAN OF DISTRIBUTION

I. OVERVIEW

1. The Division of Enforcement submits this modified plan of distribution (the “Plan”) to 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. As described more specifically below, the Plan provides for distribution of funds collected in the above-captioned matter to compensate investors harmed by the conduct that served as the basis for its findings of securities law violations in the Commission’s Order (the “Order”)¹ against DeVere USA, Inc. (“Respondent”).

II. BACKGROUND

2. According to the Order, between at least June 2013 and March 2016, Respondent failed to make full and fair disclosure to clients and prospective clients of material conflicts of interest regarding compensation obtained from third-party product and service providers. During the relevant period, Respondent provided investment advice to its clients in connection with the

¹ See 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, Advisers Act Rel. No. 4933 (June 4, 2018).

transfer of U.K. pension assets to overseas retirement plans that qualified under the U.K. tax authority's regulations as a Qualifying Recognized Overseas Pension Scheme ("QROPS"). Respondent did not disclose arrangements in which third-party product and service providers recommended by Respondent in connection with its QROPS advice compensated an overseas affiliate of Respondent that, in most cases, compensated the Respondent investment adviser representative ("IAR") who made the recommendations. Respondent made material misstatements and omissions relating to these compensation agreements and the related conflicts of interest in its Form ADV filed with the Commission and delivered to clients.

3. The IARs made statements concerning the benefits of transferring U.K. pension assets to QROPS, including with respect to U.S. and U.K. tax treatment and the investment options that a Respondent client would have in QROPS, which were materially misleading or incomplete.

4. Respondent also failed to tailor both its compliance program to its actual business and to undertake many of the responsibilities laid out in its existing compliance manual. Respondent did not have policies and procedures to address its QROPS business and the related conflicts of interests. In addition, Respondent did not follow or implement many of its existing policies and procedures.

5. As a result of Respondent's conduct, the Order found that Respondent violated Sections 206(1), 206(2), 207, and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 promulgated thereunder.

6. In the Order, Respondent was ordered to pay a civil money penalty in the amount of \$8,000,000.00 to the Commission within ten (10) days of the entry of the Order. On June 11, 2018, Respondent paid as ordered.

7. The Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil money penalty could be distributed to those harmed by Respondent's conduct described in the Order (the "Fair Fund").

8. Under this Plan, the Fair Fund, plus any interest earned, less taxes, fees or other expenses of administering this Plan (the "Net Fair Fund") will be available for distribution to Eligible Investors (defined below).

9. The Fair Fund is currently deposited in a Commission designated interest-bearing account at the United States Department of the Treasury's Bureau of Fiscal Service ("BFS"), where it will be held until a disbursement occurs. All BFS fees will be paid from the Fair Fund. The current balance of the Fair Fund, including accrued interest, as of February 13, 2020, is approximately \$8,178,179.61.

10. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. It is anticipated that the Fair Fund may receive additional funds from a related district court action, *SEC v. Alderson, et al.*, 18-cv-4930 (VEC)(S.D.N.Y). If any additional funds are received, those funds will be added to the Fair Fund for disbursement to Eligible Investors pursuant to the Plan.

11. The Fair Fund is not being distributed according to a claims-made process because the Commission staff has reasonably concluded that it has all records necessary to calculate harm as described in the Plan of Allocation, attached as Exhibit A. As a result, procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission's Rules,² are not applicable.

² 17 C.F.R. § 201.1101(b)(4).

12. The Plan is approved by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

III. DEFINED TERMS

13. “**Certification Form**” means the form that will be mailed to each Eligible Investor in order to confirm the Eligible Loss Amount, the name of the payee to which the Eligible Investor’s check will be issued, and the mailing address for distribution. The Certification Form will also collect each Eligible Investor’s Social Security or Tax Identification Number and any other information needed relating to the tax treatment of any distribution. The Certification Form may be accompanied by other tax forms, as required, relating to the tax treatment for any distribution.

14. “**Days**” means calendar days, unless otherwise specified herein.

15. “**Dispute**” means a written objection by an Eligible Investor to the amount the Fund Administrator has calculated as the Eligible Investor’s Eligible Loss Amount.

16. “**Distribution Payment**” is the share of the Net Fair Fund to be paid to each Eligible Investor as calculated in accordance with the Plan of Allocation (*see* Exhibit A).

17. “**Distribution Plan Notice**” means a written notice from the Fund Administrator to each of the Eligible Investors regarding the Plan approval.

18. “**Eligible Investor**” refers to an individual or entity, or their lawful successor or assign, who opened an account with Respondent that later resulted in the transfer of money to a QROPS, who signed a contract with Respondent resulting in the transfer of money to a QROPS, or who transferred money to to a QROPS during the Relevant Period and who is determined by the Fund Administrator to be eligible under the Plan of Allocation (*see* Exhibit A). An Eligible Investor does not include:

- a. Respondent, its officers or directors, employees, parent companies, affiliates,³ subsidiaries, creditors, heirs, distributees, spouses, parents, dependent children, or controlled entities of any of the foregoing Persons or entities;
- b. Any Person who, as of the Certification Form due date, has been the subject of criminal charges related to the conduct detailed in the Order, unless and until such defendant is found not guilty in all such criminal actions prior to the Certification Form Due Date, and proof of the finding(s) is included in such defendant's timely filed Certification Form;
- c. Any assignee of another person's right to obtain a recovery in the Commission's action against Respondent; however, this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise; and
- d. The Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as Fund Administrator.

19. **“Eligible Loss Amount”** is the amount of harm the Fund Administrator determines each Eligible Investor incurred as determined by the Plan of Allocation (*see* Exhibit A). If the Eligible Investor transferred money to a QROPS in a currency other than U.S. dollars, the Fund Administrator will convert the amount to U.S. dollars, using the appropriate exchange rate on the date of transfer.

³ As used herein, “affiliate” shall have the meaning described in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

20. **“Fair Fund”** means the monies paid to the Commission by Respondent in full satisfaction of the Order.

21. **“Fund Administrator”** refers to Analytics Consulting LLC (“Analytics”) (collectively, with all its employees, agents, consultants, and independent contractors), which has been appointed by the Commission to administer and distribute the Fair Fund in accordance with the terms of the Plan.

22. **“Net Fair Fund”** means the Fair Fund, plus any interest earned, less any amounts expended for investment fees, tax obligations, and fees and expenses of the Fund Administrator and the Tax Administrator in accordance with this Plan.

23. **“Person”** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

24. **“Plan”** means the Plan in the form approved by the Commission.

25. **“Plan of Allocation”** means the methodology by which a Distribution Payment is calculated. The Plan of Allocation is set forth in Exhibit A.

26. **“Potentially Eligible Claimants”** means those Persons, or their lawful successors, identified by the Distribution Agent as having possible claims to recover from the Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Fair Fund under this Distribution Plan.

27. **“Pro Rata Share”** is equal to the Net Fair Fund multiplied by the ratio of an Eligible Investor’s Eligible Loss Amount to the sum of the Eligible Loss Amounts of all Eligible Investors.

28. **“Relevant Period”** shall mean June 5, 2013 to March 30, 2016, inclusive of both dates.

29. “**Tax Administrator**” refers to Miller Kaplan Arase LLP (“Miller Kaplan”), the firm appointed by the Commission to serve as the tax administrator of the Fair Fund.

IV. ADMINISTRATORS

A. Fund Administrator

30. On November 16, 2018, Analytics was appointed as the Fund Administrator to assist in overseeing the administration of the Fair Fund.⁴ Analytics has obtained a bond in accordance with Rule 1105(c) of the Commission’s Rules,⁵ in the amount of \$8,000,000.00, the amount paid by Respondent pursuant to the Order. The Fund Administrator will be reimbursed for the cost of the bond premium from the Fair Fund.

31. The Fund Administrator will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants, or third parties retained by the Fund Administrator in furtherance of its duties). The Fund Administrator’s reasonable fees and expenses associated with distributing the Fair Fund shall be paid from the Fair Fund after approval by the Commission, pursuant to the Commission’s Rules.

32. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, obtaining updated mailing information for Eligible Investors as necessary, preparing accountings, cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, and disbursing the Fair Fund in accordance with the Plan. Pursuant to Rule

⁴ Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 84607 (Nov. 16, 2018).

⁵ 17 C.F.R. § 201.1105(c).

1105(a) of the Commission’s Rules,⁶ the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

B. Tax Administrator

33. On June 14, 2018, Miller Kaplan was appointed as the Tax Administrator by the Commission to handle the tax obligations of the Fair Fund.⁷ The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission.⁸

34. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- a. Obtaining a taxpayer identification number;
- b. Timely requesting funds necessary for the timely payment of all applicable taxes, the timely 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 required for distributions from the Fair Fund.

35. The Fund Administrator shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

⁶ 17 C.F.R. § 201.1105(a).

⁷ Order Appointing Tax Administrator, Exchange Act Rel. No. 83443 (June 14, 2018).

⁸ See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 81057 (June 30, 2017).

36. All taxes will be paid from the Fair Fund, subject to the review and approval of Commission staff.

V. ADMINISTRATION OF THE FAIR FUND

A. Procedures for Locating and Notifying Eligible Investors

37. On the basis of information obtained by the Commission staff and based on review and analysis of applicable records, the Fund Administrator will identify the Eligible Investors.

38. Within forty-five (45) days of the Commission's approval of the Plan, the Fund Administrator will send each Eligible Investor a notice via mail and/or email regarding the approval of the Plan ("Distribution Plan Notice"). The Distribution Plan Notice will include as appropriate (a) a statement characterizing the distribution; (b) a link to the approved Plan posted on the Fair Fund's website and instructions for requesting a copy of the Plan or downloading the Plan; (c) an Eligible Loss Amount calculation with an explanation how the *Pro Rata* Share is calculated, if the Fair Fund is distributed on a pro rata basis; (d) the Certification Form, along with the notice of the requirement and time period allotted for the return of the Certification Form; (e) instructions for submitting to the Fund Administrator any Dispute to the Eligible Loss Amount; (f) a description of the tax information reporting and other related tax matters; (g) the procedures for the distribution as set forth in the Plan; and (h) the name and contact information for the Fund Administrator in case an Eligible Investor has questions regarding the distribution. The Fund Administrator will coordinate with the Tax Administrator to request information from each Eligible Investor that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

39. Within forty-five (45) days following the entry by the Commission of its order approving this Plan, the Fund Administrator shall:

- a. Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund website, www.Deverefairfund.com, will make available a copy of the approved Plan, include a copy of the Distribution Plan Notice, and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Eligible Investors. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website.
- b. Establish and maintain a toll-free telephone number, 888-626-0151, for Eligible Investors to call to 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. The Fund Administrator will also establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Eligible Investors as well as on the Fair Fund's website.
- c. Create a mailing and claims database, consisting of the existing information of the Potentially Eligible Claimants.
- d. Run a National Change of Address search to retrieve updated addresses for all records in the new database, thereby ensuring updated mailing information for Potentially Eligible Claimants.

B. Certification Requirement by Eligible Investors

40. In order to maintain classification as an Eligible Investor, the Certification Form must be signed by the Eligible Investor under penalty of perjury under the laws of the United States and returned to the Fund Administrator by the deadline stated in the Distribution Plan Notice. The Certification Form must be executed by the Eligible Investor, unless the Fund Administrator accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Eligible Investor's behalf. Those authorized to act on behalf of Eligible Investors will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan. A request by a surviving beneficiary or alternate payee of a deceased Eligible Investor must be supported by proper documentation validating their identity and status as the lawful beneficiary of the Eligible Investor. At a minimum, the surviving beneficiary must submit a copy of a death certificate to demonstrate the Eligible Investor is deceased. He or she is also required to provide additional documentation including, but not limited to, a Last Will and Testament, estate records, Letters Testamentary, letters of administration, evidence of probate and/or any other testamentary provisions of the deceased person to demonstrate their status as beneficiary. Certified copies are not required. The Fund Administrator, in consultation with the Commission staff, retains the discretion to determine whether proper documentation has been submitted.

41. The Fund Administrator will review all Certification Forms. Each Eligible Investor will have the burden of proof to establish their identity as an Eligible Investor. The Fund Administrator will have the right to request, and the Eligible Investor will have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

C. Failure to Respond to Distribution Plan Notice

42. If an Eligible Investor fails to return the Certification Form within sixty (60) days from the date of the Distribution Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Eligible Investor by mail, telephone or email, if known to the Fund Administrator. If an Eligible Investor fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may remove such Eligible Investor from the distribution and such Eligible Investor's allocated amount of the Net Fair Fund will remain in the Fair Fund.

D. Undeliverable Mail

43. The Fund Administrator will forward any returned mail for which an updated address is provided or obtained. The Fund Administrator will attempt to locate any Eligible Investors whose Distribution Plan Notice is returned by the United States Postal Service ("USPS") as "undeliverable" and will document all such efforts. The Fund Administrator will utilize all means reasonably available to locate Eligible Investors and to obtain updated addresses in response to undeliverable notices. The Fund Administrator will then resend the Distribution Plan Notice to the Eligible Investor's new address. If the Distribution Plan Notice is returned as undeliverable again, and the Fund Administrator, despite all reasonable efforts, is unable to find an Eligible Investor's correct address, the Fund Administrator, after consultation with the Commission staff, may remove such Eligible Investor from the distribution and the allocated distribution amount may be distributed *pro rata* among the remaining Eligible Investors. In no event, however, will an Eligible Investor receive from the Net Fair Fund more than the Eligible Investor's Eligible Loss Amount. The Fund Administrator will make available, upon request by the Commission staff, a list of all Eligible Investors whose Distribution Plan Notices have been

returned as “undeliverable” due to incorrect addresses and for whom the Fund Administrator has been unable to locate current addresses.

E. Procedures for Disputing Eligible Loss Amount

44. Disputes will be limited to the calculation of the Eligible Loss Amounts to Eligible Investors. Within sixty (60) days of the date of the Distribution Plan Notice, the Eligible Investor must submit 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. Within thirty (30) days of receipt of the written Dispute, the Fund Administrator will notify the Eligible Investor of its resolution of the Dispute, which will be final. This procedure will be set forth in the Distribution Plan Notice.

F. Validation and Approval of the Payment File

45. In order to disburse the Net Fair Fund, the Fund Administrator will compile and submit a list of payees (including payee names, addresses, and Social Security or Tax Identification Numbers) and payment amounts (the “Payment File”) to the Commission staff no later than one hundred twenty (120) business days after the date of the Distribution Plan Notice. The Payment File shall be accompanied by a reasonable assurances letter as to the completeness and accuracy of the Payment File.

46. Prior to distribution, the Fund Administrator, together with the Tax Administrator, shall establish a reserve to permit payment of the remaining expenses of the distribution, including anticipated tax obligations and the fees and expenses of the Tax Administrator and anticipated fees and expenses of the Fund Administrator.

47. Consistent with Rule 1101(b)(6) of the Commission's Rules,⁹ the Commission staff will obtain an order from the Commission to disburse the Fair Fund. Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the Escrow Account (defined below). The Fund Administrator shall then distribute the funds to Eligible Investors as provided for in the Plan.

48. The Fund Administrator may aggregate accounts held by a Person in the same legal capacity in determining Distribution Payments.

G. Escrow Account

49. Prior to disbursement of the Net Fair Fund, the Fund Administrator will establish account(s) described in the following paragraph at a United States commercial bank (the "Bank"), that is not unacceptable to the Commission staff.

50. The Fund Administrator shall establish with the Bank an Escrow Account pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the Commission staff, in the name of and bearing the Employer Identification Number ("EIN") of the Qualified Settlement Fund as described above. The Fund Administrator shall also establish with the Bank a separate deposit account ("Deposit Account") (e.g., controlled distribution account, managed distribution account, linked checking account, or investment account) for the purpose of funding Distribution Payments to be distributed to Eligible Investors by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: DeVere Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *In the Matter of DeVere USA, Inc.*, Administrative Proceeding File No. 3-18527.

⁹ 17 C.F.R. § 201.1101(b)(6).

51. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors or tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in AAA-rated 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.

52. 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.

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

54. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls (e.g., check number and check amount) before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

H. Procedures for Distributing the Fair Fund

55. Following the Commission's issuance of an order to disburse the Net Fair Fund to Eligible Investors as provided for in the Plan, the Fund Administrator shall commence the distributions to all Eligible Investors as promptly as possible following the transfer of funds from the BFS to the Escrow Account at the Bank.

56. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this check-cashing period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below in Paragraphs 58-61 below.

57. Payments to each Eligible Investor will be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that checks will be void after ninety (90) days and cannot be reissued after ninety (90) days from the date the original check was issued;
- c. A statement that reissued checks will expire on the later of ninety (90) days from the date of the original check or forty-five (45) days from the date of the reissued check;
- d. A statement that the tax treatment of the distribution is the responsibility of each Eligible Investor and that the Eligible Investors should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
- e. Contact information for the Fund Administrator for questions regarding the Distribution Payment.

58. Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of securities law violations.

I. Wind-up and Reconciliation

59. The Fund Administrator is authorized to reissue checks to Eligible Investors upon the receipt of a valid, written request from the Eligible Investor. Such reissued checks will be void at the later of ninety (90) days from issuance of the original check or forty-five (45) days from the reissuance, and in no event will a replacement check be reissued after ninety (90) days from the date of original issuance.

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

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

62. The Fund Administrator will make reasonable efforts to contact Eligible Investors to follow-up on the status of uncashed Distribution Payments over \$100 (other than those

returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

63. The Fund Administrator will work with the Bank to obtain information about uncashed checks, 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.

64. Following the conclusion of any efforts by the Fund Administrator to locate any such Eligible Investors, the amount of all uncashed checks will be credited to the Net Fair Fund and may, along with any other remaining funds, be distributed to the remaining Eligible Investors, if so ordered by the Commission.

J. Other Rights and Powers

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

K. Accountings

66. Pursuant to Rule 1105(f) of the Commission’s Rules,¹⁰ the Fund Administrator will file an accounting with the Commission during the first ten (10) days of each calendar quarter on a standardized form provided by the Commission staff. The Fund Administrator will

¹⁰ 17 C.F.R. § 201.1105(f).

file an accounting of all monies earned or received and all monies spent in connection with the administration of this Plan.

67. 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 taxes and all other outstanding fees and expenses, and then return any remaining monies to the Commission. The Fund Administrator shall submit a final accounting in a Commission approved format to Commission staff, pursuant to Rule 1105(f) of the Commission's Rules,¹¹ for approval by the Commission prior to termination of the Fair Fund, cancellation of the bond, and discharge of the Fund Administrator.

L. Amendments and Procedural Deadline Extensions

68. The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan. Immaterial changes may be made by the Fund Administrator in consultation with the Commission staff. If, upon consultation with Commission staff, there are any changes to the Plan that are determined to be material, Commission approval is required prior to implementation by amending the Plan.

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

M. Document Retention

70. The Fund Administrator will retain all documents in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. The Fund

¹¹ 17 C.F.R. § 201.1105(f).

Administrator will shut down the Fair Fund’s website established specifically for the administration of the Fair Fund six (6) months after the closing of the Escrow and Deposit Accounts, or at such earlier time as the Fund Administrator determines with concurrence of the Commission staff.

N. Termination of the Fair Fund

71. The Fair Fund will be eligible for termination, and the Fund Administrator eligible for discharge and cancellation of its bond, after all of the following have occurred: (a) all taxes, fees, and expenses have been paid; (b) all remaining funds in the possession of the fund administrator have been paid to the Commission for transfer to the U.S. Treasury; and (c) a final accounting has been approved by the Commission. When the Commission has approved the final accounting, the Commission staff will seek an order from the Commission: (a) to send the remaining funds to the U.S. Treasury; (b) to terminate the Fair Fund; (c) to discharge the Fund Administrator; and (d) to cancel the Fund Administrator’s bond.

EXHIBIT A

PLAN OF ALLOCATION

1. The Fund Administrator will determine the amount to be distributed to each Eligible Investor from the Net Fair Fund.
2. Eligible Loss Amount will be equal to 7% of the total amount, in U.S. dollars, transferred by an Eligible Investor to a QROPS during the Relevant Period.¹² The 7% figure is the portion of the pension transfer value that was sent to Respondent's parent company, which in turn compensated one-half of the amount to the investment adviser representative ("IAR") who recommended the transfer to the investor. Respondent did not disclose this arrangement or payments to its IARs, or the material conflict of interest that these payments created, to its clients or prospective clients.
3. The Fund Administrator will sum the Eligible Loss Amounts across all QROPS transfers made by an Eligible Investor to determine the Eligible Investor's Eligible Loss Amount. The Fund Administrator has determined that the Net Fair Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Investors. Therefore, the distribution will proceed as a *pro rata* distribution, which means each Eligible Investor will receive a Distribution Payment equal to the Net Fair Fund multiplied by the ratio of his, her or its Eligible Loss Amount to the sum of the Eligible Loss Amounts of all Eligible Investors.
4. If an Eligible Investor's Distribution Payment is less than \$10.00, that Eligible Investor will not receive a Distribution Payment and his, her or its Distribution Payment will be

¹² For the purpose of this methodology, "transferred" includes any account opened with Respondent that later resulted in the transfer of money to a QROPS, or any contract signed with Respondent resulting in the transfer of money to a QROPS, as well as any transferring of monies to a QROPS during the Relevant Period.

distributed on a *pro rata* basis to other Eligible Investors whose Distribution Payments are greater than \$10.00.