

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

HOPE ADVISORS, LLC, KAREN)
BRUTON, TODD WORTMAN, and)
DAWN ROBERTS,)

Defendants.)

) Case No. 1:16-CV-01752-LMM

_____)

AMENDED PLAN OF DISTRIBUTION

I. Introduction

1. On August 30, 2017, the Securities and Exchange Commission (“SEC” or “Commission”) filed an Amended Complaint against Hope Advisors, LLC (“Hope”); its principal, Karen Bruton (“Bruton”), and two Hope employees, Todd Wortman (“Wortman”), and Dawn Roberts (“Roberts”) (collectively, “Defendants”). The Amended Complaint alleged that Hope and Bruton perpetrated a scheme to charge unearned fees to Hope Investments LLC (the “HI

Fund”), a fund they managed. The Amended Complaint further alleged that Roberts and Wortman aided and abetted this fraud.

2. On September 13, 2018, the Court entered the Final Judgment against Hope and Bruton. On September 18, 2018, the Court entered the Consent Final Judgment against Wortman and Roberts. The Court imposed, jointly and severally, disgorgement and civil penalties against Hope and Bruton of \$1,237,235.00 and \$250,000.00, respectively. The Court imposed civil penalties against Wortman and Roberts of \$100,000.00 and \$75,000.00, respectively. The Defendants paid a total of \$1,660,370.65.

3. On July 16, 2019, the Court established a fair fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties, along with the disgorgement collected can be distributed to those harmed by the Defendants’ conduct described in the Amended Complaint (the “Fair Fund”). The Fair Fund is currently on deposit in an interest-bearing account with the United States Treasury’s Bureau of the Fiscal Service. Also on July 16, 2019, Miller Kaplan Arase, LLP was appointed as Tax Administrator (the “Tax Administrator”) to handle the tax obligations of the Fair Fund. On November 25, 2019, JND Legal Administration (“JND”) was appointed as the Distribution Agent (the “Distribution Agent”) to assist in overseeing the administration of the Fair Fund in consultation

with Commission staff, pursuant to the terms of this Amended Plan of Distribution (the “Amended Plan” or “Plan”).

4. In accordance with the Final Judgments, this Plan was developed jointly by the Distribution Agent and the SEC in accordance with practices and procedures customary in Fair Fund distributions. The Plan governs the administration and distribution of the Fair Fund, and sets forth the method and procedures for distributing the assets of the Fair Fund to investors harmed by the conduct alleged in the Amended Complaint.

II. Defined Terms

5. As used herein, the following definitions shall apply:

- (a) “**Days**” shall mean calendar days, unless otherwise specified herein. Should a deadline fall on a weekend or holiday, that deadline should be pushed to the next business day.
- (b) “***De Minimis Amount***” is \$10.00. Each Eligible Investor’s Distribution Payment must be equal to or greater than the *De Minimis* Amount in order for the Eligible Investor to receive a Distribution Payment.
- (c) “**Distribution Agent**” shall mean JND Legal Administration (collectively, with all its employees, agents, consultants, and

independent contractors), which has been appointed by the Court to administer and distribute the Fair Fund in accordance with the terms of the Plan.

- (d) **“Distribution Payment”** shall mean the funds allocated to an Eligible Investor pursuant to the Plan of Allocation referenced herein.
- (e) **“Eligible Investor”** shall mean a Potentially Eligible Investor who is not an Excluded Party or an Unresponsive Investor, and whose Recognized Loss as calculated in the Plan of Allocation entitles them to a Distribution Payment.
- (f) **“Excluded Party”** includes:
 - (i) Defendants, affiliates, or controlled entities who served in such capacity during the Relevant Period, and their assigns, creditors, heirs, and distributees;
 - (ii) Any Person who assigned their right to obtain a recovery in the Commission’s action against Defendants; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law; and

- (iii) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.
- (g) **“Fair Fund”** shall mean the funds totaling \$1,660,370.65 paid to the Commission by the Defendants with any additions thereto as may be provided by future Court order or agreement in related cases or otherwise.
- (h) **“Incentive Allocation Fees”** shall mean the actual fees charged monthly to Eligible Investors’ accounts based on Hope’s calculation of the HI Fund’s performance.
- (i) **“Net Available Fair Fund”** shall mean the Fair Fund, plus accumulated interest and earnings thereon, less fees and costs of administering the Fair Fund and implementing the Plan, and less any taxes that may be assessed against the Fair Fund.
- (j) **“Person”** shall mean natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

- (k) **“Plan of Allocation”** shall mean the methodology by which a Potentially Eligible Investor’s Recognized Loss and Distribution payment is calculated.
- (l) **“Potentially Eligible Investors”** shall mean those Persons identified by Commission staff during its investigation, who were harmed by the scheme that charged unearned fees during the Relevant Period.
- (m) **“Preliminary List”** is the list of Potentially Eligible Investors who are not (a) Unresponsive Investors or (b) an Excluded Party. The Distribution Agent will apply the methodology set forth below, to determine whether they qualify as Eligible Investors.
- (n) **“Pro Rata Share”** shall mean a computation intended to measure Eligible Investors’ claims against one another. Should the total Recognized Loss of all Eligible Investors exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Investors based upon a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Investor’s *Pro Rata Share* by dividing the Eligible

Investor's Recognized Loss by the Total Recognized Losses of all Eligible Investors.

- (o) **“Recalculated Incentive Allocation Fees”** shall mean the fees that should have been charged to investors' accounts, as calculated by Commission staff, if Hope had properly accounted for the profitability of certain trades.
- (p) **“Recognized Loss”** shall mean the sum across months of excess actual Incentive Allocation Fees paid by the Eligible Investor's account less the Recalculated Incentive Allocation Fees during each month of the Relevant Period as set forth in the Plan of Allocation referenced herein.
- (q) **“Relevant Period”** shall mean December 1, 2012 through March 31, 2016, inclusive of both dates.
- (r) **“Tax Administrator”** shall mean Miller Kaplan Arase LLP, the firm appointed by the Court to serve as the tax administrator of the Fair Fund.
- (s) **“Total Recognized Loss”** shall mean the sum of the Recognized Losses across all Eligible Investors.

- (t) **“Unresponsive Investor”** is a Potentially Eligible Investor whose address the Distribution Agent has not been able to verify and/or who does not timely respond to the Distribution Agent’s attempts to obtain information, including any information sought in the Distribution Plan Notice

III. Responsibilities of the Tax Administrator

6. The Fair Fund is a “Qualified Settlement Fund” within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, 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-1 - § 1.468B-5, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Timely requests for funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable tax returns; and,

- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Net Available Fair Fund.

7. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

IV. Identification and Notice to Potentially Eligible Investors

8. The Distribution Agent shall oversee the administration of the notices, procedures, and the distribution of the Fair Fund as provided in this Plan. Based on information obtained by the Commission staff during its investigation, and review and analysis of the applicable records, the Commission staff has identified one hundred seventy-seven (177) Potentially Eligible Investors. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims are not applicable.

9. Within fifteen (15) days following the entry by the Court of its order approving this Plan, the Distribution Agent shall:

- (a) Create a mailing and distribution database, consisting of the existing information of the Potentially Eligible Investors;

- (b) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring updated mailing information for Potentially Eligible Investors;
- (c) Establish a link on the Distribution Agent's website, www.JNDLA.com, dedicated to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan, include the Distribution Plan Notice, Certification Form, and related materials in downloadable form, and such other relevant information that the Distribution Agent believes will be beneficial to investors;
- (d) Provide a copy of the approved Plan to the Commission and request that the Commission post it on the Information for Harmed Investors page of www.sec.gov and establish a link to the Fair Fund's website;
- (e) Establish and maintain a traditional mailing address and an email address, which will be listed on all correspondence from the Distribution Agent; and,
- (f) Establish a toll-free telephone number by which Potentially Eligible Investors can obtain information about the Fair Fund.

10. The Distribution Agent will send to each Potentially Eligible Investor's last known address a notice (the "Distribution Plan Notice") within forty-five (45) days following the entry by this Court of an Order approving the Plan. The Distribution Plan Notice will notify the Potentially Eligible Investor of the Court's approval of the Plan, including as appropriate:

- (a) A statement characterizing the distribution;
- (b) Explain how to obtain a copy of the approved Plan by request or from the Fair Fund's website;
- (c) The name and contact information for the Distribution Agent in order to provide any requested information or to contact with questions regarding the distribution.
- (d) The Eligible Investor's calculated Recognized Loss;
- (e) An explanation of how a *pro rata* amount is calculated;
- (f) The form for the Eligible Investor to confirm their Recognized Loss ("Certification Form"), along with the deadline for the return of the Certification Form; and
- (g) Objection procedures, consisting of instructions for submitting to the Distribution Agent a written objection to their calculated Recognized Loss.

11. The Distribution Agent will coordinate with the Tax Administrator to request information from each Eligible Investor in the Distribution Plan Notice that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund.

12. Eligible Investors must timely provide to the Distribution Agent the Certification Form included with the Distribution Plan Notice in order to be considered for classification, or to retain their existing status, as an Eligible Investor.

13. All submissions must be verified on the basis of a signed and completed Certification Form executed by the Potentially Eligible Investor or its representative under the penalty of perjury under the laws of the United States.

V. Identification of Unresponsive Investors

14. If a Potentially Eligible Investor fails to provide the Distribution Agent a properly completed Certification Form postmarked within thirty (30) days of the postmarked date of the Distribution Plan Notice, the Distribution Agent shall make two (2) attempts to contact the Potentially Eligible Investor telephonically or by electronic mail. If a last known telephone number or electronic mail address is not located, the Distribution Agent will attempt to make contact by first class mail. If a Potentially Eligible Investor fails to respond to the Distribution Agent's

contact attempts as described in this paragraph within fourteen (14) days of the last contact attempt that Potentially Eligible Investor will be deemed an Unresponsive Investor, will be excluded from the Preliminary List, and will not be eligible for a distribution under the Plan.

15. The Distribution Agent shall attempt to locate any Potentially Eligible Investor whose Distribution Plan Notice has been returned by the USPS as undeliverable. The Distribution Agent shall mail again any returned undelivered mail for which the USPS has provided a forwarding address using the same response deadline from the initial Distribution Plan Notice mailed.

16. Additionally, the Distribution Agent may engage a third-party search firm to conduct more rigorous searches for addresses of missing Potentially Eligible Investors. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable, after consultation with the Commission staff. If the Distribution Plan Notice is returned again, and the Distribution Agent, despite best practicable efforts, is unable to find a Potentially Eligible Investor's correct address, the Distribution Agent, in its discretion, may remove such Eligible Investor from the distribution and the allocated Distribution Payment will remain in the Fair Fund for

distribution, if practicable, to the remaining Eligible Investors in accordance with the Plan of Allocation below.

17. Any Eligible Investor who relocates or otherwise changes contact information after receipt of the Notice Packet must promptly communicate any change in address or contact information to the Distribution Agent.

VI. Objections to Classification and Recognized Loss Calculations

18. Any and all objection(s) to information specific to the Potentially Eligible Investor provided in the Distribution Plan Notice, and in particular, to the information that follows, must be set forth with specificity, in writing, pursuant to the instructions provided in the Distribution Plan Notice:

- (a) The Distribution Agent's classification of a Potentially Eligible Investor as an Excluded Party, thereby excluding the Potentially Eligible Investor from the Preliminary List; and/or
- (b) The Distribution Agent's calculation of the Potentially Eligible Investor's Recognized Loss, which will be the basis for the calculation of Distribution Payments for Potentially Eligible Investors so not excluded.

The objection must demonstrate, under penalty of perjury, the grounds for the objection and be accompanied by documentation sufficient to prove the

claimed inaccuracy or omission. All objections must be postmarked within thirty (30) days of the postmarked date of the Distribution Plan Notice, and must include current contact information, including a telephone number and, if applicable, an electronic email address, for the objecting Potentially Eligible Investor. Any objections not timely submitted in accordance with the instructions in the Distribution Plan Notice will be deemed waived.

19. The Distribution Agent will review all objections and supporting documentation and will notify the Potentially Eligible Investor in writing of the resolution of the objection within fourteen (14) days of the postmarked date of the objection. All determinations made by the Distribution Agent in accordance with this Plan shall be final and not subject to appeal.

VII. Plan of Allocation

20. The Distribution Agent will determine the amount to be distributed to each Eligible Investor from the Net Available Fair Fund in the following manner:

- (a) Determination of Investor Eligibility: Each Potentially Eligible Investor involved in a scheme trade carried out by Hope during the Relevant Period and who is not an Excluded Party or an Unresponsive Investor is an Eligible Investor.

- (b) Determination of Recognized Loss: For each Eligible Investor, the Recognized Loss is calculated as the Incentive Allocation Fees paid by the account in a given month less the Recalculated Incentive Allocation Fees the account should have paid in a given month, summed across all months of the Relevant Period. The Distribution Agent will sum the Recognized Losses across all Eligible Investors to determine the Total Recognized Losses of all Eligible Investors.
- (c) Determination of an Eligible Investor's Distribution Payment: Since the Total Recognized Loss exceeds the Net Available Fair Fund, the Net Available Fair Fund will be allocated to Eligible Investors on a *pro rata* basis. The Distribution Agent will divide each Eligible Investor's Recognized Loss by the Total Recognized Loss to determine the Eligible Investor's *Pro Rata* Share. The Distribution Agent will then multiply the Net Available Fair Fund by each Eligible Investor's *Pro Rata* Share to determine each Eligible Investor's Distribution Payment.
- (d) De Minimis: No Distribution Payment will be made to an otherwise Eligible Investor unless the amount to be paid equals

or exceeds \$10.00. Distribution Payments below the De Minimis will remain in the Fair Fund and will be allocated to other Eligible Investors whose Distribution Payments exceed the *De Minimis* on a *pro rata* basis, according to steps (a) through (c) above.

VIII. Payment to Eligible Investors

21. Within sixty (60) days following the Distribution Agent's receipt of the Certification Forms, the Distribution Agent shall prepare a final Payee List that includes the names of Eligible Investors, the Recognized Loss of each Eligible Investor, and the Distribution Payment amount. The Payee List shall be accompanied by a "reasonable assurances letter" from the Distribution Agent, representing that the Payee List: (a) was compiled in accordance with the Plan; (b) is accurate as to Eligible Investors' names, addresses, and their Recognized Losses; and (c) provides all information necessary to make to each Eligible Investor a Distribution Payment.

22. The Distribution Agent shall provide the final Payee List to the Commission staff, and upon review, the Commission staff shall petition the Court to transfer the Net Available Fair Fund identified in the Payee List for distribution from the Commission to the Distribution Agent for distribution pursuant to the

Distribution Plan. The final Payee List shall, upon request, be made available to the Court under seal.

23. Upon receipt of the Payee List and reasonable assurances letter, the Commission staff will seek an order from the Court to disburse the funds identified in the Payee List in accordance with the provisions of the Plan. Following the Court's approval of the Commission's petition for the authority to transfer the Net Available Fair Fund from the Commission to the Escrow Account, as detailed below. The Distribution Agent shall commence the disbursing the Distribution Payment to all Eligible Investors as promptly as possible following the transfer of the funds.

24. Prior to the disbursement of the Net Available Fair Fund, the Distribution Agent will establish account(s) described in the following paragraph at a United States commercial bank (the "Bank"), not unacceptable to the Commission staff. The Distribution Agent shall establish an escrow account ("Escrow Account") pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff, in the name of and bearing the Employer Identification Number of the QSF. The Distribution Agent shall also establish with the Bank a separate deposit account (the "Deposit Account") (e.g., controlled distribution account, managed distribution account, linked checking and

investment account) for the purpose of funding Distribution Payments to be distributed to Eligible Investors pursuant to the Plan. The name of each account shall be in the following form: “Hope Advisors Fair Fund (EIN XX-XXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *SEC v. Hope Advisors, LLC, et al.*, Case No. 1:16-CV-01752-LMM.

25. 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, tax obligations and/or fees and expenses of the Tax Administrator and Distribution Agent, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in mutual funds registered under the Investment Company Act of 1940 that directly invest in short term United States Treasury securities and obligations, all backed by the full faith and credit of the United States Government.

26. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the

Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

27. In consultation with the Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Deposit Accounts that will preserve earnings, if possible, without compromising safety and soundness by providing maximum protection for the Fair Fund.

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

29. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check.

30. All Fair Fund checks presented for payment will be subject to “positive pay” controls before being honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

31. All such checks issued to Eligible Investors by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution

shall be instructed to stop payment on those checks. Where an Eligible Investor's check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Investor's right to a Distribution Payment shall be extinguished upon the occurrence of the stale date. All such funds will remain in the Fair Fund.

32. The Distribution Agent shall use all reasonable commercially available resources to locate all Eligible Investors whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Investor has the burden of providing the Distribution Agent with any changes to his or her mailing address.

33. All Distribution Payments shall 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 recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- (c) A statement that checks will be void after ninety (90) days after the date of issuance; and,

- (d) The Distribution Agent's contact information, if the Eligible Investor has any questions regarding the distribution.

34. Any such communication shall be submitted to the Commission staff and the Tax Administrator for review and approval. All Distribution Payments, on their face or the accompanying mailing, shall clearly indicate that the money is being distributed from a Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

IX. Post-Distribution

35. The Distribution Agent will work with the Bank and maintain information about uncashed checks, returned payments, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible and for maintaining a record of such efforts. The Distribution Agent is also responsible for accounting for all payments.

36. The Distribution Agent shall reissue checks to Eligible Investors, upon the receipt of a valid, written request from the Eligible Investor. In cases where an Eligible Investor is unable to endorse a disbursement check as written (*e.g.*, name change as a result of marriage, divorce or death), and the Eligible Investor or its lawful representative requests the reissuance of a disbursement

check under a different name, the Distribution Agent will request, and must receive, documentation supporting the change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Distribution Agent will issue an appropriately redrawn check to the requesting party. Such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after ninety (90) days after the original check was issued.

37. The Distribution Agent will make reasonable efforts to contact Eligible Investors to follow up on the status of uncashed Distribution Payments over \$100.00 (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 Distribution Agent may reissue such checks, subject to the time limits detailed herein.

38. The Distribution Agent will perform an advanced address search for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within ninety (90) days after the original check was issued. If the Distribution Agent, despite best practicable efforts, is unable to find an Eligible Investor’s correct address, the Distribution Agent, in its discretion, may remove such Eligible

Investor from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if practicable, to the remaining Eligible Investors.

X. Wrap-Up and Wind Down of Distribution

39. The Distribution Agent will destroy all documents, including documents in any media, six (6) years after the transfer of any remaining funds to the Commission. In addition, the Distribution Agent will remove the case related information from the Distribution Agent's website and shut down the telephone number established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at an earlier date pursuant to the Commission staff's direction.

XI. Disposition of Remaining Funds after Distribution

40. A residual within the Fair Fund (the "Residual") will be established for any amounts remaining after all assets have been disbursed. The Residual may include, among other things, funds reserved for future taxes and for post-distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds.

41. If, after distribution is complete and all taxes, fees, and expenses have been paid, funds remain in the Fair Fund, and the Distribution Agent, in

consultation with the Commission staff has determined further distributions to be infeasible, the Residual shall be transferred to the Commission, pending a final accounting. Upon completion of the final accounting, the Commission staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the Commission staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.¹

XII. Termination of the Fair Fund

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

43. The Commission staff will seek an Order from this Court, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

¹ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the Commission in any judicial action brought by the Commission under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

44. The Fair Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (a) the final accounting has been submitted and approved by the Court, (b) all taxes, fees and expenses have been paid, and (c) this Court has approved the Commission staff's recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020).

45. No further claims shall be made against the Fair Fund beyond the amount allocated to Eligible Investors. Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever.

XIII. Payment of Costs, Fees, and Taxes, and Filing Report and Accountings

46. All taxes, investment fees, and the reasonable fees and expenses of the Tax Administrator and Distribution Agent, including those incurred by any third-party professionals and service providers retained in the performance of their duties, will be paid from the Fair Fund.

47. The Distribution Agent shall provide Commission staff, who shall file with the Court, a progress report, pursuant to and in a format to be provided by Commission staff, within forty-five (45) days of Court approval of this Plan, and shall provide additional reports within twenty (20) days after the end of every quarter thereafter, and a final report when its duties are completed.

48. The progress reports shall inform the Court and Commission staff of the activities and status of the Fair Fund during the requested reporting period, and shall:

- (a) Specify, at a minimum, the location of the account(s) comprising the Fair Fund; and,
- (b) Include, among other things, an interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of those accounts, all monies earned or received into these accounts, monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Plan, and funds distributed to Eligible Investors under this Plan.

49. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan, and a request for approval of any unpaid taxes, if any.

XIV. Other Rights and Powers

50. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders and/or any investor information provided by the Court or

Commission staff, and shall not be liable to anyone for any action taken or omitted by it in connection with this Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Plan.

51. The receipt and acceptance of a distribution by an Eligible Investor is not intended to be a release of an Eligible Investor's rights and claims against any defendant to this action or their past or present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.

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

53. The Court reserves the right to amend this Plan from time to time and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Plan.

54. To carry out the purposes of this Plan, the Distribution Agent is authorized to make immaterial changes consistent with the purposes of the Plan. If a change is deemed to be material by the Commission staff, Court approval is required prior to implementation by amending the Plan.

55. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person in connection with a distribution made in accordance with the list of all Eligible Investors and their Recognized Loss as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Investor of a distribution from the Fair Fund, such Eligible Investor shall be deemed to have released all claims that such Eligible Investor may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.