



This Plan of Distribution (“Plan”) relates solely to the Fair Fund created in connection with the First Payment Default Practice described in the Order.

2. The Order stated that in late 2006, Respondents underwrote two residential mortgage backed securities (“RMBS”) that were collateralized by approximately \$1.9 billion of subprime mortgages. In connection with its efforts to market and sell the RMBS, the Respondents made misleading statements regarding a key investor protection known as the First Payment Default (“FPD”) covenant, which required the originators of the mortgage loans held by the securitization trusts (“Trusts”) to repurchase certain delinquent loans or otherwise cure breaches of the covenant. If the originators were notified of and subsequently failed to repurchase or cure a breach of the FPD covenant, Credit Suisse through DLJ Mortgage Capital, Inc. was required to do so. Notwithstanding the FPD covenant, Credit Suisse, without disclosure, did not ensure the removal of all FPD loans originated by one originator (the “Originator”). The securities that represented the different tranches of each of the Trusts are referred to herein as “Certificates.” As a result of this conduct, the RMBS Trusts lost approximately \$10,056,561 due to the mortgage loans that improperly remained in the Trusts.

3. Pursuant to the Order, Respondents Credit Suisse Securities (USA) LLC and Asset Backed Securities Corporation paid disgorgement of \$10,056,561, prejudgment interest of \$2,200,000, and a civil money penalty of \$6,000,000 for conduct related to the FPD practices described in the forgoing paragraph (the “FPD Practice”), for a total of \$18,256,561 to be distributed to harmed investors.

4. The purpose of this distribution is to compensate investors in the RMBS Trusts harmed by Credit Suisse’s misrepresentations and omissions in its offering materials regarding the FPD Practice. The distribution methodology allocates the Fair Fund amongst the RMBS Trusts based on the proportion of the mortgage collateral in each Trust that was originated by the

Originator. The funds are then allocated to each Trust's Eligible Claimants based on the proportion of their claim to all other Eligible Claims for the Trust.

5. Pursuant to the Order, Respondents will pay all reasonable administrative costs and expenses of the distribution, including the fees and expenses of the Tax Administrator and Fund Administrator. The Tax Administrator and Fund Administrator will submit invoices directly to Respondents for payment with copies to Commission staff.

6. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Fair Fund is currently deposited in a Commission designated interest bearing account at the United States Department of the Treasury ("Treasury"), where it will be held until a disbursement occurs. It is not anticipated that the Fair Fund will receive additional funds, other than accumulated interest and earnings from investments.

7. The Commission appointed Damasco & Associates, LLP as the Tax Administrator on December 4, 2012.<sup>2</sup>

8. The Commission issued an order appointing Gilardi & Company, LLC ("Gilardi") as the Fund Administrator on January 14, 2014.<sup>3</sup> Pursuant to the order, Gilardi has obtained a bond in accordance with Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans in the amount of \$18,256,561. The amount of the bond premium will be paid by Respondents.

9. This Plan sets forth the methods and procedures for distributing the Fair Fund. This Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of this Plan.

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<sup>2</sup> See Order Appointing Tax Administrator, Exchange Act Rel. No. 68349 (December 4, 2012).

<sup>3</sup> See Order Appointing Fund Plan Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 71300 (January 14, 2014).

**B. Definitions**

As used herein, the following definitions shall apply:

10. “Claim Deficiency Notice” means the notice sent by the Fund Administrator to a Potentially Eligible Claimant whose claim is deficient in one or more ways (e.g., failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and the opportunity to cure such deficiency. Subject to certain extensions provided for in this Plan, the deadline to cure deficiencies shall be thirty (30) days from the date of the Claims Deficiency Notice.

11. “Credit Suisse FPD Practice Fair Fund” or “Fair Fund” shall refer to all proceeds paid by the Respondents to comply with the Order including disgorgement, prejudgment interest and civil penalties, plus any accumulated interest and earnings thereon.

12. “Days” shall mean calendar days, unless specified otherwise.

13. The “Distribution De Minimis Amount” is \$250.00. No Eligible Claimant shall receive a distribution payment unless the preliminary calculation performed pursuant to paragraphs 54 through 58, below, is equal to or greater than \$250.00. For purposes of satisfying the Distribution De Minimis Amount requirement, the preliminary calculation for each Harmed Trust will stand on its own and any request that it be combined with any other preliminary calculations for other Harmed Trusts, Recognized Claims for other Harmed Trusts, or other Proof of Claim Forms submitted by or relating to the same Eligible Claimant will not be allowed.

14. “Eligible Claimants” shall mean persons (other than Excluded Parties) who purchased Eligible Securities on Eligible Purchase Dates.

15. “Eligible Purchase Dates” shall mean purchases of Eligible Securities in a Trust which were made within 30 days of the published date of the relevant prospectus supplement for that Trust. The Eligible Purchase Dates are identified on Exhibit A to this Plan.

16. “Eligible Securities” shall mean the certificates in the Harmed Trusts that are identified in Exhibit A to this Plan. Excluded certificates include those certificates identified in the relevant prospectus supplements as “Non-Offered Certificates” and those certificates designated “A-R”, “ARL” or other residual certificates with negligible initial principal value. Exhibit A to this Plan lists the Harmed Trusts, Eligible Securities for each Trust, and the Eligible Purchase Dates for each Trust.

17. “Excluded Parties” shall mean Respondents and all other entities or individuals who (a) are or have at any time been a parent, subsidiary, affiliate, partner, or member of Respondents; (b) exercised control of or were controlled by the Respondents; or (c) during the period 2005 to the present, were employed by, or served as officers or directors, or were members of the Respondents or any other entity that is deemed to be an Excluded Party pursuant to parts (a) and (b) hereof. The Proof of Claim Form (defined in ¶ 25 below) will require all Potentially Eligible Claimants (defined in ¶ 24 below) to certify that that they are not an Excluded Party.

18. “Filing Deadline” shall mean the date established in accordance with this Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be received by the Fund Administrator or postmarked to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the Fair Fund. Subject to certain extensions provided for in this Plan, the Filing Deadline shall be one hundred and twenty (120) days from the earliest date of the mailing of Notice Packets.

19. “Fund Administrator” shall mean Gilardi, the firm appointed by the Commission, pursuant to Rule 1105(a) of the Commission’s Rules on Fair Fund and Disgorgement Plans, to administer the Plan.

20. “Harmed Trusts” shall mean those RMBS Trusts identified as having been harmed by the FPD Practice.

21. “Net Available Fair Fund” shall mean Credit Suisse FPD Practice Fair Fund, less any taxes that may be assessed against the Fair Fund.

22. “Notice Packet” shall mean a packet that will be mailed to Potentially Eligible Claimants which shall include, at a minimum, a notice to Potentially Eligible Claimants of their potential right to participate in the distribution of the Credit Suisse FPD Practice Fair Fund and their obligation to file a Proof of Claim Form in order to participate, a summary of the Plan of Allocation, and a Proof of Claim Form.

23. “Plan of Allocation” refers to the provisions in paragraphs 54 through 58, below, which describe the methodology used to calculate a Recognized Claim amount for an Eligible Claimant.

24. “Potentially Eligible Claimants” shall mean those persons identified by the Fund Administrator as having possible claims to recover from the Net Available Fair Fund under this Plan, or persons asserting that they have possible claims to recover from the Net Available Fair Fund under this Plan.

25. “Proof of Claim Form” shall mean the form designed by the Fund Administrator in accordance with the terms of this Plan for the filing of a claim, which form shall require, at a minimum, sufficient documentation of the Potentially Eligible Claimant’s purchases of Eligible Securities on Eligible Purchase Dates.

26. “Recognized Claim” shall be the Eligible Claimant’s compensable allocation amount calculated pursuant to the methodology of the Plan of Allocation.

27. “Rejection Notice” shall mean the notice sent by the Fund Administrator to a Potentially Eligible Claimant stating the Fund Administrator’s determination that the Potentially Eligible Claimant’s claim is not eligible to receive any distribution.

28. “Request for Reconsideration Deadline” shall mean the date established in accordance with this Plan by which a Potentially Eligible Claimant’s dispute of a Rejection Notice must be filed to challenge the Rejection Notice. Subject to certain extensions provided for in this Plan, the deadline to file such requests shall be 30 days from the date of Rejection Notice.

29. “Summary Notice Publication” shall mean the notice published in *PR Newswire* and *Investor’s Business Daily*. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement that the Fair Fund relates to purchases of Eligible Securities during the Eligible Trading Period and the means of obtaining a Notice Packet.

30. “Tax Administrator” shall mean Damasco and Associates, LLP, the Tax Administrator appointed by the Commission.

**C. Allocation of the Fair Fund amongst Eligible Claimants**

31. The Net Available Fair Fund shall be distributed to Eligible Claimants as provided under the terms of this Plan.

32. The Net Available Fair Fund shall be distributed on a pro-rata basis provided that an Eligible Claimant’s Recognized Claim meets or exceeds the Distribution De Minimis Amount.

**D. Administration of the Claims Procedure**

General Administration Provisions

33. The Fund Administrator shall oversee the administration of the claims, procedures, and distribution as provided in this Plan. The Fund Administrator shall review the claims of Potentially Eligible Claimants and make determinations under the criteria established herein as to the eligibility of claimants to recover monies and the amount of money to be distributed from the Net Available Fair Fund to each Eligible Claimant.

34. Any claim asserted by a Potentially Eligible Claimant shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence that the Fund Administrator deems necessary or appropriate including, but not limited to, if available, account statements and trade confirmations.

35. The recipient of Eligible Securities as a gift, transfer, inheritance, devise or operation of law shall be eligible to file a Proof of Claim Form and participate in the distribution of the Credit Suisse FPD Practice Fair Fund only to the extent the particular donor or decedent as the actual purchaser of Eligible Securities would have been eligible. The recipient of Eligible Securities during the Eligible Trading Period by gift, transfer, inheritance, devise, or operation of law shall not otherwise be eligible to file a Proof of Claim with respect to such securities, and shall not be deemed the assignee of any claim relating to the purchase of such securities unless specifically so provided in the instrument of gift or assignment. However, the donee and the donor may not both make a claim with regard to the same Eligible Securities. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

36. Regarding claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and for which such claims are properly made by the custodian or fiduciary of the retirement plan and not

by the retirement plan's participants, the Fund Administrator shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of retirement plan participants and the number of shares owned by each retirement plan participant, if that information is known to the Fund Administrator or provided to the Fund Administrator. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner consistent with its fiduciary duties and the account or retirement plan provisions. With respect to any retirement plan that has been closed prior to the Fund Administrator's identification of Eligible Claimants, the Fund Administrator shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Fund Administrator prior to the Filing Deadline.

37. The Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to this Plan. The Fund Administrator will inform Commission staff of any changes needed to this Plan. Upon agreement with Commission staff, the Fund Administrator may implement immaterial changes to this Plan to effectuate the general purposes. If a change is deemed to be material by Commission staff, Commission approval is required prior to implementation by amending this Plan.

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

#### Identification of and Notice to Potentially Eligible Claimants

39. The Fund Administrator shall, insofar as is practicable, identify individual Potentially Eligible Claimants from a review of trading records, account information provided by registered broker-dealers and investment advisers, and any other source available to it.

40. Following the entry by the Commission of its order approving this Plan, the Fund Administrator shall:

- a. Design a Notice Packet, which shall be submitted to Commission staff for review and approval.
- b. Create a mailing and claims database, created through the broker/nominee solicitation process, of the Potentially Eligible Claimants;
- c. 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;
- d. Mail by United States First Class Mail a Notice Packet to each Potentially Eligible Claimant known to the Fund Administrator and brokerages, custodial banks, and other institutions (“Nominal Holders”) that may hold securities in “street name” as nominees for the benefit of their customers who are the beneficial owners of the securities;
- e. Establish a specific website, [www.CreditSuisseFPDPracticeFairFund.com](http://www.CreditSuisseFPDPracticeFairFund.com), constructed for the administration of the Credit Suisse FPD Practice Fair Fund from which each Potentially Eligible Claimant may obtain a copy of the Plan, Notice Packet and other relevant documents online;
- f. Provide a copy of the Plan and Summary Notice Publication to Commission staff for posting to the Information for Harmed Investors page of SEC.gov and establishing a link to the Credit Suisse FPD Practice Fair Fund’s website;
- g. Establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the Fair Fund;

- h. Publish a copy of the Summary Notice Publication, approved by Commission staff, in *PR Newswire* and *Investor's Business Daily*; and
- i. Deliver electronic copies of the Proof of Claim Form to electronic filers who regularly submit electronic claims on behalf of their clients.

41. On an on-going basis, after the first Notice Packet is mailed but before the Filing Deadline, the Fund Administrator shall continue to supply the Notice Packet to Potentially Eligible Claimants who contact the Fund Administrator requesting a copy via mail, phone or e-mail.

42. The Fund Administrator shall attempt to locate any Potentially Eligible Claimant whose Notice Packet has been returned by the U.S. Postal Service as undeliverable. The Fund Administrator shall immediately re-mail any returned undelivered mail for which the USPS has provided a forwarding address.

43. Additionally, the Fund Administrator may engage a third-party search firm to conduct more rigorous searches for missing Potentially Eligible Claimants. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable after consultation with the staff of the Commission.

44. Unless extended by the Commission, the claims period shall be no more than one hundred and twenty (120) days from the earliest date of mailing of Notice Packets to Potentially Eligible Claimants.

45. To avoid being barred from asserting a claim, on or before the Filing Deadline, each Potentially Eligible Claimant must submit to the Fund Administrator a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Fund Administrator may extend the Filing Deadline for one or more Potentially Eligible Claimants for good cause shown, with approval by Commission

staff, in which event such extension shall constitute the Filing Deadline for such Potentially Eligible Claimants. Such decisions of the Fund Administrator and Commission staff are final and not subject to challenge. The burden shall be upon the Eligible Claimant to ensure that its Proof of Claim Form has been timely received by the Fund Administrator.

Review of Claims, and Notification of Claims Determination, Including Notice of Deficient Claims and Opportunity to Cure

46. The Fund Administrator shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's claim, together with any additional conclusions of the Fund Administrator on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of its claim, and that it qualifies as an Eligible Claimant; and the Fund Administrator shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

47. The Fund Administrator shall provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient and instructions on how to cure the deficiency.

48. Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have thirty (30) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

49. A Potentially Eligible Claimant who has failed to file an appropriate Proof of Claim in a timely manner, or who has failed to cure a deficiency in a timely manner identified in a Claim Deficiency Notice, is not permitted to object to the barring or denial of his or her claim on the basis that:

- a. The Fund Administrator failed to mail, or properly to mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Notice Packet, Proof of Claim, Claim Deficiency Notice, or the relevant Rejection Notice;
- b. The Fund Administrator failed to record properly the receipt of an initial Proof of Claim, or a revised Proof of Claim to cure deficiencies, or the requisite supporting documentation; or
- c. A Potentially Eligible Claimant's name and/or proper contact information was not properly recorded in the Fund Administrator's records.

50. In rejecting any Proof of Claim Form, the Fund Administrator shall advise each Potentially Eligible Claimant of the basis for the rejection of the claim by Rejection Notice. Any Potentially Eligible Claimant who objects to the Fund Administrator's determination of eligibility or wishes the Fund Administrator to reconsider its denial must so advise the Fund Administrator in writing with a Request for Reconsideration within thirty (30) calendar days of the date of the Rejection Notice. The Fund Administrator shall promptly consider any such Request for Reconsideration and shall notify the Potentially Eligible Claimant in writing of the decision.

51. All claimants have the burden of providing the Fund Administrator with any changes to his, her or its name or mailing address.

52. All determinations made by the Fund Administrator in accordance with this Plan shall be final.

53. After the Fund Administrator has completed the process of analyzing the claims and determining the amounts to be distributed as provided in this Plan, and prior to the distribution of funds from the Net Available Fair Fund, the Fund Administrator shall engage an independent, third-party firm, acceptable to the Commission, to perform a set of agreed upon

tasks, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Distribution Plan. The Fund Administrator shall provide the Commission staff with the results of that review together with any written analysis or reports related to the review, and, upon request, shall make the firm available to the Commission to respond to questions concerning the review.

#### Plan of Allocation

54. The Net Available Fair Fund for the FPD Practice will be allocated among the Harmed Trusts based on the proportion of the mortgage collateral in each Harmed Trust that was originated by the Originator. Exhibit B to the Plan shows the percentage of the Net Available Fair Fund allocated to each of the Harmed Trusts.

55. Preliminary calculations will be made for all Eligible Claimants in each Harmed Trust on a pro-rata basis determined by the Eligible Claimant's investment in the Harmed Trust divided by the sum of all Eligible Claimants' investments in the Harmed Trust. For example, if Eligible Claimant A has investments in Eligible Securities in a certain Harmed Trust equal to 5% of the dollar value of all the investments in Eligible Securities by all Eligible Claimants in that Trust, the preliminary calculation amount for Eligible Claimant A would be 5% of the Net Available Fair Fund allocation for that Trust.

56. After the preliminary calculations have been made, any Eligible Claimant whose preliminary calculation amount is less than the Distribution De Minimis Amount will be removed from the pool of Eligible Claimants.

57. Final calculations will then be made for all remaining Eligible Claimants in the relevant Harmed Trust on a pro-rata basis as described in paragraph 55, above, but excluding Eligible Claimants whose preliminary calculation amounts are less than the Distribution De Minimis Amount, to arrive at a Recognized Claim amount. For example, if after claims are

eliminated for Eligible Claimants with a preliminary calculation amount of less than the Distribution De Minimis Amount, Eligible Claimant A has investments in Eligible Securities that are 6.5% of the total investments in Eligible Securities made by all Eligible Claimants in the Trust, then Claimant A's Recognized Claim amount is 6.5% of the Net Available Fair Fund allocation for that Trust.

58. In the event that the number of claims submitted by Eligible Claimant(s) for a particular Harmed Trust is such that the Eligible Claimant(s) would receive a recovery greatly in excess of their Recognized Claim amount if all Eligible Claimants submitted claims related to investments equal to the issued amount of the Harmed Trust (the "Projected Minimum Recovery"), the Fund Administrator, with the agreement of the Commission staff, may use discretion in determining the amount of the Recognized Claim(s) for that particular Harmed Trust. Discretion will not be applied to any Eligible Claimant's Recognized Claim such that his, her or its distribution payment will be less than the Projected Minimum Recovery.

#### Provisions for the Tax Administrator

59. 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-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 Net Available Fair Fund.

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

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

Procedures for Distributing the Fair Fund

62. The Fund Administrator shall distribute the Net Available Fair Fund to all Eligible Claimants only after all timely submitted Proof of Claims have been processed and all Potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

63. Within one hundred and twenty (120) days following completion of processing of all Potentially Eligible Claimant disputes and Proof of Claim, the Fund Administrator shall prepare a list of Eligible Claimants and the amount of each Eligible Claimant's Recognized Claim (the "Payment File"). The Recognized Claim amount recorded in the Payment File will be in an amount adjusted for reserves for taxes, as requested by the Tax Administrator and approved by Commission staff.

64. The Fund Administrator will also provide a "reasonable assurances letter" to the Commission staff, representing that the list of Eligible Claimants: (a) was compiled in accordance with this Plan; (b) is accurate as to Eligible Claimants' names, addresses, and Recognized Claim amounts; and (c) provides all information necessary to make to each Eligible Claimant a payment equal to the amount of the applicable Recognized Claim amount for such Eligible Claimant, adjusted for reserves for taxes.

65. Upon receipt of the Payment File and reasonable assurances letter, the Commission staff will seek an order from the Commission to disburse the funds identified in the Payment File in accordance with the provisions of this Plan pursuant to Rule 1101(b)(6), 17 C.F.R. § 201.1101(b)(6). Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the “Escrow Account.” The Fund Administrator shall then distribute the funds to Eligible Claimants as provided for in this Plan.

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

67. The Fund Administrator shall establish with the Bank an Escrow Account pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the staff of the Commission, in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund as defined in paragraph 59, above. The Fund Administrator shall also establish with the Bank a separate “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 Claimants by the Fund Administrator pursuant to this Plan. The name of each account shall be in the following form: Credit Suisse FPD Settlement Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *In the Matter of Credit Suisse Securities (USA) LLC, et al.*, Administrative Proceeding File No. 3-15098.

68. 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 Claimants, and tax obligations,

including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government. 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.

69. 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 staff of the Commission, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and Deposit Accounts.

70. 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 Distribution Fund 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 distribution account to pay the approved checks.

71. All payments to Eligible Claimants 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, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after one hundred twenty (120) days; and (d) contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients

characterizing their distributions shall be submitted to the staff of the Commission for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

72. The Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any Orders issued by the Commission, the Secretary by delegated authority or an Administrative Law Judge; and/or any investor information provided by Commission staff.

73. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against any party.

74. All checks will bear a stale date of one hundred twenty (120) days from the date of the check. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An Eligible Claimant's claim will be extinguished if he, she or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund. If a check reissue has been requested before the stale date, such request is governed by paragraph 76, below.

#### Returned or Un-Cashed Checks

75. The Fund Administrator shall use its best efforts to make use of reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Claimants whose checks are returned to the Fund Administrator as undeliverable by the U.S. Postal Service. Where new address information becomes available, the Fund Administrator shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than one hundred twenty

(120) days after the initial mailing of the original check), the check shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. Such reissued checks will be void either ninety (90) days after issuance or ninety (90) days after the stale date of the original check, whichever is later.

76. The Fund Administrator shall reissue checks to Eligible Claimants upon the receipt of a valid written request from an Eligible Claimant. In cases where an Eligible Claimant is unable to endorse a disbursement check as written (e.g., name change as a result of divorce or Eligible Claimant is deceased), and the Eligible Claimant or its lawful representative requests the reissuance of a disbursement check under a different name, the Fund Administrator will request, and must receive, documentation supporting the change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Fund Administrator will issue an appropriately redrawn check to the requesting party. Such reissued checks will be void either ninety (90) days after issuance or ninety (90) days after the stale date of the original check, whichever is later.

#### Residual Funds and Final Accounting

77. Approximately one (1) year following initial distribution, after all taxes of the Net Available Fair Fund have been satisfied, if there are remaining funds from uncashed checks allocated to a Harmed Trust, the Commission staff may at its discretion direct the Fund Administrator to distribute those residual funds to Eligible Claimants, if any, from that Trust who filed claims with the Fund Administrator after the Filing Deadline or who were late in curing a previously rejected claim. The allocation of any residual funds to be distributed to these late claimants would be made only within the Harmed Trust that was the source of the residual funds, and not across any other Harmed Trusts. The late Eligible Claimants will receive a distribution

payment up to the Recognized Claim amount that would have been received if the claim had been filed on time, the amount depending on the available residual funds for that Harmed Trust.

78. If any funds remain after the payment of claims that were filed late or cured after the Filing Deadline, or if no such claims exist, Commission staff may at its discretion direct the Fund Administrator to allocate those residual funds on a pro rata basis for claims paid and checks cashed to all Eligible Claimants who cashed a distribution check and who would receive at least the Distribution De Minimis Amount from such re-distribution. The allocation of any residual funds to be distributed to such Eligible Claimants would be made only within the same Harmed Trust that was the source of the residual funds, and not across any other Harmed Trusts.

79. If, after consultation between the Fund Administrator and Commission staff, a distribution described in either paragraph 77 or 78, above, is not deemed cost effective, the remaining funds may be transmitted to the Commission for transfer to the U.S. Treasury after all final accounting has been completed per the terms of paragraph 82, below.

80. Upon final distribution of the funds, the Fund Administrator shall make arrangement for the final payment of taxes and shall submit a final accounting to the Commission in a standard accounting format provided by the staff of the Commission. The Fair Fund shall be eligible for termination, and the Fund Administrator eligible for discharge, after all of the following have occurred: (a) the final accounting has been submitted and approved by the Commission, (b) all taxes and fees have been paid and (c) any remaining funds have been paid to the Commission for transfer to the United States Treasury.

#### Filing of Reports and Accountings

81. The Fund Administrator shall provide the Commission a quarterly cash report, in a format to be provided by Commission staff, within ten (10) days after the end of every calendar quarter. At the request of Commission staff, the Fund Administrator will also provide periodic

progress reports, which will inform the Commission of the activities and status of the Fair Fund during a requested reporting period.

82. 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. In addition to the final report, the Fund Administrator shall submit a final accounting to the Commission, as provided in paragraph 80, above, of all monies received, earned, spent, and distributed in connection with the administration of this Plan in a format provided by Commission staff.

83. Pursuant to Commission direction, the Fund Administrator will either turn over to the SEC or destroy all documents, including documents in any media, six (6) years after the approval of the final accounting. In addition, the Fund Administrator will shut down the toll-free number and website established specifically for the administration of the Fair Fund upon the transfer of any remaining funds to the Commission.