

**EXHIBIT A**  
**DISTRIBUTION PLAN**

**I. OVERVIEW**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “Commission”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Strong Investment Management (“SIM”) and Joseph B. Bronson (“Bronson”) in this proceeding.

2. As described more specifically below, the Plan seeks to compensate clients who were harmed by the Defendants’ conduct alleged in the Complaint, in connection with a cherry-picking scheme. As calculated using the methodology detailed in the Plan of Allocation (Attachment A), clients will be compensated for their losses due to the misconduct of Defendants SIM and Bronson in improperly allocating trades to client accounts between January 3, 2012 and July 27, 2016 (the “Relevant Period”). Based on information obtained by the Commission during its investigation and the review and analysis of applicable records, the Commission has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process.

3. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

**II. BACKGROUND**

4. On February 20, 2018, the Commission filed a Complaint against SIM, Bronson, and John B. Engebreston (“Engebreston”) (collectively, “Defendants”). According to the Complaint, from January 2012 through in or about July 2016, SIM and Bronson engaged in a fraudulent trade allocation scheme known as cherry-picking. Bronson carried out this scheme by trading in SIM’s omnibus account and delaying

1 allocation of those trades until he determined the security's intraday performance. SIM  
2 and Bronson's cherry-picking scheme led to a disproportionate number of profitable  
3 trades allocated to Bronson's own account and a disproportionate allocation of  
4 unprofitable trades to client accounts.

5 5. On August 21, 2019, the Court entered Final Judgments against SIM  
6 [Docket 45] and Bronson [Docket 46], ordering SIM and Bronson, jointly and severally,  
7 to pay disgorgement of \$960,656 and prejudgment interest of \$100,501.39. Bronson was  
8 also ordered to pay a civil penalty of \$184,767. SIM and Bronson have paid the judgment  
9 in full, a total of \$1,245,924.39. All of the ordered funds that were paid are currently  
10 held in an interest-bearing account with the United States Department of Treasury's  
11 Bureau of the Fiscal Service.

12 6. On September 20, 2021, the Court established a Fair Fund and appointed  
13 Miller Kaplan Arase LLP ("MKA") as the Tax Administrator to execute all the tax  
14 reporting and filing requirements for the Fair Fund [Docket 54].

15 7. On June 8, 2022, the Court appointed Guidehouse, Inc., Baker & Hostetler  
16 LLP, and PACE Claims Services LLC ("GBP") as the Distribution Agent to oversee the  
17 administration and distribution of the Fair Fund [Docket 63].

### 18 **III. DEFINITIONS**

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

20 8. **"Administrative Costs"** shall mean any administrative costs and expenses,  
21 including without limitation tax obligations, the fees and expenses of the Tax  
22 Administrator and the Distribution Agent, and investment and banking costs.

23 9. **"Distribution Payment"** means a payment from the Fair Fund to a Payee in  
24 accordance with the terms of this Plan.

25 10. **"Eligible Claimant"** means a Preliminary Claimant, who is determined to  
26 have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an  
27 Excluded Party or an Unresponsive Preliminary Claimant.  
28

1           11. **“Excluded Party”** shall mean: (a) the Defendants, and Defendants’  
2 advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents,  
3 children, or controlled entities; (b) the Distribution Agent, its employees, and those  
4 Persons assisting the Distribution Agent in its role as the Distribution Agent; and (c) any  
5 purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund  
6 for value; provided, however, that this provision shall not be construed to exclude those  
7 Persons who obtained such a right by gift, inheritance or devise.

8           12. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a)  
9 of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’  
10 violations alleged in the Complaint.

11           13. **“Final Determination Notice”** means the written notice sent by the  
12 Distribution Agent to (a) any Preliminary Claimant who timely submitted a written  
13 dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant  
14 of its resolution of the dispute; and (b) those Preliminary Claimants who have not  
15 responded to the Plan Notice as described in paragraph 17, except for those whose Plan  
16 Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she,  
17 or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination  
18 Notice will constitute the Distribution Agent’s final ruling regarding the status of the  
19 claim.

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

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

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

27           17. **“Plan Notice”** means a written notice from the Distribution Agent to each  
28 Preliminary Claimant regarding the Court’s approval of the Plan, including, as

appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission's website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

18. **"Plan of Allocation"** means the methodology by which a Preliminary Claimant's Recognized Loss is calculated. The Plan of Allocation is attached as Attachment A.

19. **"Preliminary Claimant"** means a Person, or their lawful successors, identified by the Distribution Agent based on its review and analysis of applicable records obtained by the Commission during its investigation, who may have suffered a loss as a result of improper allocation of trades to their accounts by Defendants during the Relevant Period.

20. **"Recognized Loss"** means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

21. **"Relevant Period"** is January 3, 2012 through July 27, 2016.

22. **"Unresponsive Preliminary Claimant"** means a Preliminary Claimant 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 Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### IV. TAX COMPLIANCE

23. Pursuant to the Court's Order [Docket 54], the Tax Administrator shall handle the tax obligations of the Fair Fund, and will be entitled to compensation for reasonable fees and expenses incurred in performance of its duties.

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

7           (a) Obtaining a taxpayer identification number;

8           (b) Requesting funds necessary for the timely payment of all applicable taxes,  
9 the payment of taxes for which the Tax Administrator has received funds, and the filing  
10 of applicable returns; and

11           (c) Fulfilling any information reporting or withholding requirements imposed  
12 on distributions from the Fair Fund.

13 **V. DISTRIBUTION AGENT**

14           25. The Distribution Agent will be responsible for administering the Fair Fund  
15 in accordance with the Plan. This will include, among other things, taking reasonable  
16 steps to obtain accurate mailing information for Preliminary Claimants; disseminating the  
17 Plan Notice; preparing accountings; cooperating with the Tax Administrator appointed  
18 by the Commission to satisfy any tax liabilities and to ensure compliance with income  
19 tax reporting requirements, including but not limited to Foreign Account Tax Compliance  
20 Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the  
21 Court; and researching and reconciling errors and reissuing payments, when possible.

22           26. To carry out the purposes of this Plan, the Distribution Agent is authorized  
23 to make and implement immaterial changes to the Plan upon agreement of the  
24 Commission staff. If a change is deemed to be material by the Commission staff, Court  
25 approval is required prior to implementation by amending the Plan.

26           27. The Distribution Agent may extend any procedural deadline contained in the  
27 Plan for good cause shown, if agreed upon by the Commission staff.  
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1           28. The Distribution Agent is entitled to rely on all outstanding rules of law and  
2 Court orders. The Distribution Agent will not be liable to anyone, except the Commission  
3 on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or  
4 omitted by the Distribution Agent in connection with the Plan and all Preliminary  
5 Claimants will have no claims against the Distribution Agent, its employees, agents, and  
6 attorneys in connection with the Plan and the administration of the Fair Fund, and will be  
7 deemed enjoined from prosecuting or asserting any such claims, except upon a finding  
8 by this Court of gross negligence or reckless disregard of duty under this Plan.

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

14           30. The Distribution Agent may be removed at any time by the Court, and  
15 replaced with a successor. In the event the Distribution Agent decides to resign, it will  
16 first give written notice to the Commission staff and the Court of such intention, and such  
17 resignation will not be effective until the Court has appointed a successor. The  
18 Distribution Agent will then follow such instructions as such successor or the Court  
19 provides in turning over management of the Fair Fund.

20           31. The Distribution Agent will be entitled to reasonable fees and expense  
21 incurred in the performance of its duties (including any such fees and expenses incurred  
22 by agents, consultants or third parties retained by the Distribution Agent in furtherance  
23 of its duties).

## 24 **VI. PLAN PROCEDURES**

### 25 Specification of Preliminary Claimants

26           32. Using information obtained during its investigation, the Commission has  
27 identified the Preliminary Claimants. Preliminary Claimants are limited to only those  
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1 Persons who may have suffered a loss as a result of the improper allocation of trades to  
2 their accounts by Defendants during the Relevant Period.

3 Procedures for Locating and Notifying Preliminary Claimants

4 33. Within thirty (30) days of Court approval of the Plan, the Distribution Agent  
5 will:

- 6 (a) Establish and maintain a website devoted solely to the Fair Fund. The  
7 Fair Fund's website will make available a copy of the approved Plan,  
8 include a copy of the Plan Notice, and related materials in  
9 downloadable form, and such other information that the Distribution  
10 Agent believes will be beneficial to Preliminary Claimants.
- 11 (b) Establish and maintain a toll-free telephone number for Preliminary  
12 Claimants to call and speak to a live representative of the Distribution  
13 Agent during its regular business hours or, outside of such hours, to  
14 hear pre-recorded information about the Fair Fund.
- 15 (c) Establish and maintain a traditional mailing address and an email  
16 address that will be listed on all correspondence from the Distribution  
17 Agent to Preliminary Claimants as well as on the Fair Fund's website.
- 18 (d) Establish and maintain a case specific database of all Preliminary  
19 Claimants based upon information provided to and obtained by the  
20 Distribution Agent, including the last known physical and email  
21 addresses.
- 22 (e) Run a National Change of Address search to retrieve updated  
23 addresses for all records in the database, thereby ensuring the mailing  
24 information for Preliminary Claimants is up-to-date; and
- 25 (f) Send a Plan Notice to each Preliminary Claimant's last known email  
26 address (if known) and/or mailing address.
- 27  
28



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

4           Undeliverable Mail

5           35. The Distribution Agent will attempt to locate any Preliminary Claimant  
6 whose mailing is returned as undeliverable by the U.S. Postal Service or otherwise,  
7 including an advanced address search using commercially available resources, if feasible,  
8 and will document all such efforts. If another address is obtained, the Distribution Agent  
9 will then resend it the Preliminary Claimant's new address within fourteen (14) days of  
10 receipt of the returned mail. If the mailing is returned again, and the Distribution Agent,  
11 despite best practicable efforts, is unable to find a Preliminary Claimant's correct address,  
12 the Distribution Agent, in its discretion, may deem such Preliminary Claimant an  
13 Unresponsive Preliminary Claimant.

14           36. The Distribution Agent, with Commission staff approval, may engage a third  
15 party search firm to conduct more rigorous searches for Persons whose mailings are  
16 returned as undeliverable.

17           37. Any Preliminary Claimant who relocates or otherwise changes contact  
18 information after receipt of the Plan Notice must promptly communicate any change in  
19 address or contact information to the Distribution Agent.

20           Procedures to Request Plan Notice

21           38. Any Person who does not receive a Plan Notice, as described in paragraph  
22 33(f), but who is aware of this Plan (e.g., through other Preliminary Claimants or on  
23 [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should  
24 contact the Distribution Agent within forty-five (45) days from the approval of the Plan  
25 to establish that they should be considered a Preliminary Claimant. The Distribution  
26 Agent will send the Person a Plan Notice within fourteen (14) days of receiving the  
27 Person's documentation, if the Distribution Agent determines that the Person should have  
28 received a Plan Notice.



1           Failure to Respond to Plan Notice

2           39. If a Preliminary Claimant is requested to respond and fails to respond within  
3 sixty (60) days from the initial mailing of the Plan Notice, the Distribution Agent will  
4 make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or  
5 email. The second attempt will in no event take place more than ninety (90) days from  
6 the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the  
7 Distribution Agent's contact attempts as described in this paragraph, the Distribution  
8 Agent, in its discretion, may deem such Preliminary Claimant an Unresponsive  
9 Preliminary Claimant.

10           Dispute Process

11           40. Disputes will be limited to calculation of Recognized Loss. Within sixty  
12 (60) days of the initial mailing Plan Notice, the Distribution Agent must receive a written  
13 communication detailing any dispute along with any supporting documentation. The  
14 Distribution Agent will investigate the dispute, and such investigation will include a  
15 review of the written dispute as well as any supporting documentation.

16           Final Determination Notices

17           41. Within ninety (90) days of the initial mailing of the Plan Notices, the  
18 Distribution Agent will send a Final Determination Notice to (a) any Preliminary  
19 Claimant who timely submitted a written dispute as described in paragraph 40 above,  
20 notifying the Preliminary Claimant of its resolution of the dispute; and (b) those  
21 Preliminary Claimants who have not responded to the Plan Notice, as described in  
22 paragraph 39 above, except for those whose Plan Notice were returned as undeliverable,  
23 notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive  
24 Preliminary Claimant.

25           Distribution Methodology

26           42. The Distribution Agent will calculate each Preliminary Claimant's  
27 Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants  
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1 who are determined to have a Recognized Loss, and who are not deemed an Excluded  
2 Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

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

11 Establishment of a Reserve

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

16 45. After all Distribution Payments are made and Administrative Costs paid, any  
17 remaining amounts in the Reserve will become part of the Residual described in  
18 paragraph 64 below.

19 Preparation of the Payment File

20 46. Within one-hundred twenty (120) days of Court approval of the Plan, the  
21 Distribution Agent will compile and send to the Commission staff the Payee information,  
22 including the name, address, calculated Recognized Loss, and the amount of the  
23 Distribution Payment for all Payees (the "Payee List"). The Distribution Agent will also  
24 provide a Declaration to the Commission staff, representing that the Payee List: (a) was  
25 compiled in accordance with the approved Plan; (b) is accurate as to Payees' names,  
26 addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes  
27 the number of Payees compensated; (d) the percentage of Recognized Loss being  
28 compensated by the disbursement from the Fair Fund, and if applicable, the total

percentage to include all prior disbursements; (e) the total amount being distributed; and (f) provides all information necessary to make a payment to each Payee.

The Escrow Account

47. Prior to the disbursement of funds from the Net Available Fair Fund, the Distribution Agent will establish an escrow account (the “Escrow Account”) with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. 208.43 and that is not unacceptable to the Commission (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff.

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

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

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

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

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

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

13 Distribution of the Fair Fund

14 53. Upon the Commission's staff's receipt, review, and acceptance of the Payee  
15 List and Declaration from the Distribution Agent, the Commission will petition the Court  
16 for authority to disburse funds from the Net Available Fair Fund to the Bank in  
17 accordance with the Payee List for distribution by the Distribution Agent in accordance  
18 with the Plan. The Payee List shall, upon request, be made available to the Court under  
19 seal. All disbursements will be made pursuant to a Court Order.

20 54. Upon issuance of an order to disburse by this Court, the Commission staff  
21 will direct the transfer of funds in accordance with the Payee List to the Bank. The  
22 Distribution Agent will then use its best efforts to commence mailing Distribution  
23 Payment checks and/or effect electronic payments within ten (10) business days of the  
24 release of the funds into the Escrow Account. All efforts will be coordinated to limit the  
25 time between the Escrow Account's receipt of the funds and the issuance of Distribution  
26 Payments.

27 55. All checks will be issued by the Distribution Agent from the Distribution  
28 Account. All checks will bear a stale date of one hundred eighty (180) days from the date

1 of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank  
2 will be instructed to stop payment on those checks. A Payee's claim will be extinguished  
3 if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will  
4 remain in the Fair Fund, except if a check reissue has been requested before the stale date,  
5 as provided in paragraph 59.

6 56. All Distribution Payments will be preceded or accompanied by a  
7 communication that includes, as appropriate: (a) a statement characterizing the  
8 distribution; (b) a statement that the tax treatment of the distribution is the responsibility  
9 of each Payee and that the Payee should consult his, her or its tax advisor for advice  
10 regarding the tax treatment of the distribution; (c) a statement that checks will be void  
11 and cannot be reissued after one hundred eighty (180) days from the date the original  
12 check was issued; and (d) contact information for the Distribution Agent for questions  
13 regarding the Distribution Payment. The letter or other mailings to Payees characterizing  
14 a Distribution Payment will be submitted to the Tax Administrator and Commission staff  
15 for review and approval.

16 57. All Distribution Payments, either on their face or in the accompanying  
17 mailing, will clearly indicate that the money is being distributed from the Fair Fund  
18 established by the Court to compensate investors for harm as a result of securities law  
19 violations.

20 Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

21 58. The Distribution Agent shall use its best efforts to make use of commercially  
22 available resources and other reasonably appropriate means to locate all Payees whose  
23 checks are returned to the Distribution Agent as "undeliverable." If new address  
24 information becomes available, the Distribution Agent will repackage the distribution  
25 check and send it to the new address. If new address information is not available after a  
26 diligent search (and in no event no later than one hundred eighty (180) days after the  
27 initial mailing of the original check) or if the distribution check is returned again, the  
28 check shall be voided and the Distribution Agent shall instruct the issuing financial

1 institution to stop payment on such check. If the Distribution Agent is unable to find a  
2 Payee's correct address, the Distribution Agent, in its discretion, may remove such Payee  
3 from the distribution and the allocated Distribution Payment will remain in the Fair Fund  
4 for distribution, if feasible, to the remaining Payees.

5 59. The Distribution Agent will reissue checks or electronic payments to Payees  
6 upon the receipt of a valid, written request from the Payee if prior to the initial stale date.  
7 In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*,  
8 name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful  
9 representative requests the reissuance of a Distribution Payment check in a different  
10 name, the Distribution Agent will request, and must receive, documentation to support  
11 the requested change. The Distribution Agent will review the documentation to  
12 determine the authenticity and propriety of the change request. If, in the discretion of the  
13 Distribution Agent, such change request is properly documented, the Distribution Agent  
14 will issue an appropriately redrawn Distribution Payment to the requesting party.  
15 Reissued checks will be void at the later of one hundred eighty (180) days from issuance  
16 of the original check or sixty (60) days from the reissuance, and in no event will a check  
17 be reissued after one hundred eighty (180) days from the date of the original issuance  
18 without the approval of Commission staff.

19 60. The Distribution Agent will work with the issuing financial institution and  
20 maintain information about uncashed checks and any returned items due to non-delivery,  
21 insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible  
22 for researching and reconciling errors and reissuing payments when possible. The  
23 Distribution Agent is also responsible for accounting for all payments. The amount of  
24 all uncashed and undelivered payments will continue to be held in the Fair Fund.

25 61. The Distribution Agent will make and document its best efforts to contact  
26 Payees to follow-up on the status of uncashed distribution checks over \$100 (other than  
27 those returned as "undeliverable") and take appropriate action to follow-up on the status  
28

1 of uncashed checks at the request of Commission staff. The Distribution Agent may  
2 reissue such checks, subject to the time limits detailed herein.

3 Receipt of Additional Funds

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

8 Disposition of Undistributed Funds

9 63. If funds remain following the initial distribution and payment of all  
10 Administrative Costs, the Distribution Agent, in consultation with the Commission staff,  
11 may seek subsequent distribution(s) of any available remaining funds. All subsequent  
12 distributions shall be made in a manner that is consistent with this Plan and pursuant to a  
13 Court Order.

14 64. A residual within the Fair Fund will be established for any amounts  
15 remaining after the final disbursement to Payees from the Fair Fund and the payment of  
16 all Administrative Costs (the "Residual"). The Residual may include funds from, among  
17 other things, amounts remaining in the Reserve, distribution checks that have not been  
18 cashed, checks or electronic payments that were not delivered or were returned to the  
19 Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

20 65. All funds remaining in the Residual that are infeasible to distribute to  
21 investors will be returned to the Commission and held pending a final accounting.

22 Administrative Costs

23 66. Pursuant to the Court's Order [Docket 54], tax obligations and reasonable  
24 fees and expenses of the Tax Administrator will be paid from the Fair Fund. Pursuant to  
25 further Order of the Court [Docket 63], the payment of fees and expenses of the  
26 Distribution Agent will be paid from the Fair Fund. All other Administrative Costs will  
27 be paid from the Fair Fund, pursuant to a Court order.



1           Filing of Reports and Accountings

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

7           68. The progress reports shall inform the Court and the Commission staff of the  
8 activities and status of Fair Fund during the relevant reporting period, and once funds are  
9 transferred to the Bank it will specify, at a minimum: (a) the location of the account(s)  
10 comprising the Fair Fund; and (b) an interim accounting of all monies in the Fair Fund as  
11 of the most recent month-end, including the value of the account(s), all monies earned or  
12 received into the account(s), funds distributed to Payees, and any monies expended from  
13 the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the  
14 implementation of this Plan.

15           69. Upon completion of all distributions to Payees and payment of all  
16 Administrative Costs, pursuant to the procedures described above, the Distribution Agent  
17 will submit to the Commission staff a final accounting, on a standardized form provided  
18 by the Commission staff. The Distribution Agent will also submit a report to the  
19 Commission staff containing the final distribution statistics regarding distributions to  
20 individuals and entities, and such other information requested by the Commission staff.  
21 The final accounting report will include a recommendation as to the disposition of the  
22 Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the  
23 Exchange Act, 15 U.S.C. § 78u(d)(7).<sup>3</sup> If distribution of the Residual to investors is  
24

25 \_\_\_\_\_  
26 <sup>3</sup> Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for  
27 Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any  
28 action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section  
6501(b).

1 infeasible, the Commission may recommend the transfer of the Residual to the general  
2 fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>4</sup>

3 Wind-down and Document Retention

4 70. The Distribution Agent will shut down the website, P.O. Box and customer  
5 service telephone line(s) established specifically for the administration of the Fair Fund  
6 six (6) months after the transfer of any remaining funds to the Commission, or at such  
7 earlier time as the Distribution Agent determines with the concurrence of the Commission  
8 staff.

9 71. The Distribution Agent will retain all materials submitted by Preliminary  
10 Claimants in either paper or electronic form for a period of six (6) years from the date of  
11 approval of a final accounting. Materials maintained in electronic form must be  
12 accessible and readable for the duration of retention. Pursuant to the Commission staff's  
13 direction, the Distribution Agent will either turn over to the Commission or destroy all  
14 materials, including documents in any media, upon expiration of this period.

15 Termination of the Fair Fund

16 72. The Fair Fund will be eligible for termination and the Distribution Agent  
17 will be eligible for discharge after all of the following have occurred (a) a final  
18 accounting, in a standard accounting format provided by the Commission staff, has been  
19 submitted by the Distribution Agent and approved by the Court; (b) all Administrative  
20 Costs have been paid; and (c) the Court has approved the Commission's recommendation  
21 as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936  
22 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).

23 73. Once the Commission staff has reviewed and accepted the final accounting,  
24 the Commission will petition the Court for an order, as appropriate, approving the final  
25  
26

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27 <sup>4</sup> 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  
28 \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not  
added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited  
or credited into the SEC Investor Protection Fund.

1 accounting, discharging the Distribution Agent, disposing of the Residual, and  
2 terminating the Fair Fund.

3 74. Once the Fair Fund has been terminated, no additional payments will be  
4 made whatsoever.

**Attachment A**

**PLAN OF ALLOCATION**

This Plan of Allocation is designed to compensate clients based on their losses from improper allocation of trades to their accounts by Defendants during the Relevant Period. Clients who did not have trades improperly allocated to their accounts during the Relevant Period are ineligible to recover under this Plan. Based upon records obtained by the Commission during its investigation, the Distribution Agent has identified those clients, or their lawful successors, who may have suffered losses as a result of improper trade allocation during the Relevant Period (the “Preliminary Claimants”).

The Distribution Agent will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as the sum of his, her, or its But-For Losses minus the sum of his, her, or its First-Day Losses.

But-For Loss: But-For Loss is calculated for each trade allocated by the Defendants to a client’s account as the principal amount of the opening position multiplied by the average return on all trades allocated by the Defendants during the Relevant Period.

First-Day Loss: First-Day Loss is calculated for each trade allocated by the Defendants to a client’s account as (a) the realized loss (or profit) resulting from the opening and closing of a position on the same trading day, or (b) the unrealized loss (or profit) from the opening of the position until the time the position was allocated to the client’s account. A loss is recorded as a negative number and a profit is recorded as a positive number.

If the Recognized Loss calculates to a negative number, reflecting a gain, the Recognized Loss is \$0.00.

For example, if a client’s But-For Losses sum to  $-\$10$  and her First-Day Losses sum to  $-\$100$ , then her Recognized Loss is  $-\$10 - (-\$100)$  or  $\$90$ . If a client’s But-For Losses sum to  $-\$120$  and her First-Day Losses sum to  $-\$100$ , then her Recognized Loss is  $-\$120 - (-\$100)$  or  $-\$20$ , which is considered to be  $\$0$  for purposes of this distribution.

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

## Additional Provisions

Allocation of Funds: Since the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its "*Pro Rata Share*" of the Net Available Fair Fund, subject to the "Minimum Distribution Amount."

Pro Rata Share: A *Pro Rata Share* computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant's *Pro Rata Share* as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

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

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and will receive a Distribution Payment equal to his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss.

Prior Recovery: To avoid payment of a windfall, the Distribution Payment will be no larger than the Payee's Recognized Loss minus the amount of any compensation for the loss that resulted from the conduct alleged in the Complaint that was received from another source (e.g., class action settlement), to the extent known by the Distribution Agent.