

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17614

In the Matter of

**Laurence I. Balter d/b/a Oracle
Investment Research**

Respondent.

:
:
:
:
:
:
:

**PROPOSED PLAN OF
DISTRIBUTION**

I. OVERVIEW

1. The Division of Enforcement submits this Proposed Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Laurence I. Balter d/b/a Oracle Investment Research (the “Respondent”) in the above-captioned matter.¹

2. As described more specifically below, the Plan seeks to compensate investors who were harmed, by the Respondent’s conduct described in the Order, in connection with Respondent’s multiple breaches of fiduciary duty and violations of the antifraud provisions of the federal securities laws between January 2011 and April 2014. Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff 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, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for their losses due to the misconduct of the Respondent from January 2011 through April 2014.

¹ See Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Securities Act Rel. No. 10367 (May 26, 2017) (the “Order”).

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over its implementation.

II. BACKGROUND

6. On May 26, 2017, the Commission issued the Order settling previously instituted cease-and-desist proceedings against the Respondent. In the Order, the Commission found that from January 2011 through April 2014, the Respondent, a former registered investment adviser to the Oracle Mutual Fund (the “Oracle Fund”), (a) fraudulently allocated profitable trades to his own accounts to the detriment of several investors’ accounts (“Cherry-Picking”); (b) falsely told investors that they would not pay both advisory fees and management fees for the portions of their accounts invested in the Oracle Fund (“Misrepresentation”); and (c) made trades for the Oracle Fund that deviated from two of the Oracle Fund’s fundamental investment limitations.

7. As a result of the conduct described in the Order, the Commission ordered the Respondent to pay disgorgement of \$489,921 plus prejudgment interest of \$10,079, and a civil penalty of \$50,000, for a total of \$550,000 to the Commission. Payments were to be made in installments over a three-year period. In the Order, the Commission established a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil penalties paid, along with the disgorgement and prejudgment interest paid, can be distributed to harmed investors (the “Fair Fund”).

8. The Respondent has paid in full. The Fair Fund has been deposited at the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”) for investment.

III. DEFINITIONS

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

9. **“Administrative Costs”** means any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Fund Administrator, tax obligations, bond premium expenses, and investment and banking costs.

10. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

11. **“Eligible Claimant”** shall mean a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

12. **“Excluded Party”** shall mean: (a) Respondent, or Respondent’s advisers, agents,

nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as the Fund Administrator; and (c) any purchaser or assignee of another Person's right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

13. **"Fair Fund"** means the \$550,000 fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondent's violations described in the Order.

14. **"Final Determination Notice"** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of their calculated Recognized Loss notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 34(f) below, notifying the Preliminary Claimant that they have been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.

15. **"Net Available Fair Fund"** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

16. **"Payee"** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation.

17. **"Person"** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

18. **"Plan Notice"** means a written notice from the Fund Administrator to Preliminary Claimants regarding the Commission'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 them from being deemed an Unresponsive Preliminary Claimant, their 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 Fund Administrator in order to provide any requested information or to contact with questions regarding the distribution.

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

20. **"Preliminary Claimant"** means those Persons, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the Commission staff during its investigation, who may have suffered a loss as a result of the Respondent's (a) Cherry-Picking; and/or (b) Misrepresentations described in the Order between January 2011 and April 2014.

21. **“Recognized Loss”** means the total amount of loss calculated for a Preliminary Claimant for both the Cherry-Picking and Misrepresentations, in accordance with the Plan of Allocation.

22. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator’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. On August 21, 2017, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.² The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission.³

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

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the 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 imposed on distributions from the Fair Fund.

25. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff.

V. FUND ADMINISTRATOR

26. On April 15, 2021, the Commission appointed DST Asset Manager Solutions, Inc., an SS&C Company, as the fund administrator for the Fair Fund (the “Fund Administrator”), and the Fund Administrator has obtained a bond in the amount of \$550,000, as

² See Order Appointing Tax Administrator, Exchange Rel. No. 34-81445 (Aug. 21, 2017).

³ See Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds, Exchange Act Rel. No. 81057 (June 30, 2017).

ordered.⁴ Pursuant to Rule 1105(a) of the Commission's Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

27. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries regarding the Plan; preparing accountings; cooperating with the tax administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Act Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

28. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

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

30. 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 or Director of Enforcement by delegated authority or an Administrative Law Judge; and/or any investor information provided by Commission staff.

31. The Fund Administrator is authorized to enter into agreements with third parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third-parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third-parties shall be deemed to be agents of the Fund Administrator under this Plan.

32. The Fund Administrator will be entitled to payment from the Fair Fund of reasonable fees and expenses, including the bond premium, incurred in the performance of its duties (including any such fees and expenses incurred by agents, consultants or third-parties retained by the Fund Administrator in furtherance of its duties).

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

33. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons

⁴ See Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 91570 (Apr. 15, 2021).

who may have suffered a loss due to the misconduct of the Respondent's (a) Cherry-Picking; and/or (b) Misrepresentations from January 2011 through April 2014.

Procedures for Locating and Notifying Preliminary Claimants

34. Within thirty (30) calendar days of Commission approval of the Plan, the Fund Administrator will:

- (a) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website, located at www.balteroracledistribution.com, will make available a copy of the approved Plan, include a copy of the Plan Notice, and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Preliminary Claimants.
- (b) Establish and maintain a toll-free telephone number for Preliminary Claimants to call and speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund.
- (c) The Fund Administrator will also establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website.
- (d) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Fund Administrator, including the last known physical and email addresses.
- (e) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date.
- (f) Send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

35. The Commission staff retains the right to review and approve any communication with investors, including any material posted on the Fair Fund's website, the Plan Notice, and any scripts used in connection with communications with investors.

Procedures to Request Plan Notice

36. Any Person who does not receive a Plan Notice, as described in paragraph 34(f), but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should send a request for the Plan Notice to the Fund Administrator within thirty (30) days of approval of the Plan to establish that

they should be considered a Preliminary Claimant. The Fund Administrator will send the Person a Plan Notice within fourteen (14) days of receipt of the Person's request, if the Fund Administrator determines that the Person should have received a Plan Notice, as provided in paragraph 34(f).

Undeliverable Mail

37. If any Plan Notice mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend the Plan Notice to the Preliminary Claimant's new address within thirty (30) days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in its discretion, may deem such Preliminary Claimant as an Unresponsive Preliminary Claimant.

38. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

Dispute Process

39. Disputes will be limited to calculation of the Recognized Loss. Within thirty (30) days of receipt of the Plan Notice, the Fund Administrator must receive a written communication detailing the dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Failure to Respond to Plan Notice

40. If a Preliminary Claimant fails to respond within thirty (30) days from the mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Preliminary Claimants by telephone or email. The second attempt will in no event take place more than forty-five (45) days from the mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Mailing of Final Determination Notices

41. Within sixty (60) days of the initial mailing of the Plan Notices, the Fund Administrator will send a Final Determination Notice to: (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 39 above, notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 40 above, except to those whose Plan Notice was returned as "undeliverable," notifying the Preliminary Claimant that they have been deemed an Unresponsive Preliminary Claimant.

Distribution Methodology

42. The Fund Administrator will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant. All Eligible Claimants who are determined to receive a Distribution Payment will be deemed a Payee.

Establishment of a Reserve

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

44. After all Distribution Payments are made and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 63 below.

Preparation of the Payment File

45. Within one hundred eighty (180) days of Commission approval of the Plan, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the "Payee List"). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the *pro-rata* applied, if any; (e) the percentage of Recognized Loss being compensated by the Fair Fund; (f) the total amount being distributed; and (g) provides all information necessary to make a payment to each Payee.

The Escrow Account

46. Prior to the disbursement of the Net Available Fair Fund, the Fund Administrator 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 staff (the "Bank"), pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff.

47. The Fund Administrator, 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.

48. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to the Escrow Account (the “Escrow Property”), if invested, 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.

49. 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.

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

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

Distribution of the Fair Fund

52. Upon the Commission’s staff’s receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will seek an Order from the Commission pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 210.1101(b)(6), to disburse funds to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission Order.

53. Upon issuance of an Order to disburse, the Commission staff will direct the transfer of the amount of funds referred to on the Payee List to the Bank. The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within thirty (30) days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account’s receipt of the funds and the issuance of Distribution Payments.

54. All checks will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of ninety (90) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee'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, except as provided in paragraph 58.

55. All Distribution Payments will 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 Payee and that the Payee 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 and cannot be reissued after ninety (90) days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

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

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

57. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable." If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than ninety (90) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. If the Fund Administrator is unable to find a Payee's correct address, the Fund Administrator, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

58. The Fund Administrator will reissue checks to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of ninety (90) days from the date of the reissuance, and in no event will a check be reissued after ninety (90) days from the date of the original issuance

without the approval of Commission staff.

59. The Fund Administrator will work with the Bank and maintain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed payments will continue to be held in the Fair Fund.

60. The Fund Administrator will make its best efforts to contact Payees to follow-up on the status of uncashed checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

Receipt of Additional Funds

61. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission’s Rules.

Disposition of Undistributed Funds

62. If funds remain following the initial distribution and payment of all Administrative Costs, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds, if feasible, pursuant to the Commission’s Rules. All subsequent distributions shall be made in a manner that is consistent with this Plan.

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

64. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to the Respondent would be inconsistent with the equitable principle that no person should profit from his wrongdoing. Therefore, in these circumstances distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

Administrative Costs

65. All Administrative Costs will be paid from the Fair Fund, in accordance with the Commission's Rules.

Accountings

66. Pursuant to Rule 1105(f) of the Commission's Rules, once funds have been transferred from the BFS to the Bank, the Fund Administrator will file an accounting with the Commission during the first ten (10) days of each calendar quarter on a standardized accounting form provided by the Commission staff. The Fund Administrator will file an accounting of all monies earned or received and all monies spent in connection with the administration of the Plan.

67. Upon completion of all distributions to Payees pursuant to the procedures described above, the Fund Administrator shall arrange for the payment of all Administrative Costs, transfer all remaining funds to the Commission, and submit a final accounting for approval by the Commission on a standardized form provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

Wind-down and Document Retention

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

69. The Fund Administrator will retain all materials submitted by Payees in either paper or electronic form for a period of six (6) years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the Commission staff's direction, the Fund Administrator will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

70. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator and approved by the Commission; (b) all Administrative Costs have been paid; and (c) any amount remaining in the Fair Fund has been returned to the Commission for transfer to U.S. Treasury. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of any Residual remaining in the Fair Fund that is infeasible to return to investors, and any amounts returned to it in the future that are infeasible to return to investors, to the U.S. Treasury, subject to Section

21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; (c) cancellation of the Fund Administrator's bond; and (d) termination of the Fair Fund.

VII. NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT

71. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (the "Notice") shall be published on the Commission's website <http://www.sec.gov/litigation/fairfundlist.htm>. Any Person wishing to comment on the Plan must do so in writing by submitting their comments within thirty (30) days of the date of the Notice (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (b) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's website should include "Administrative Proceeding File No. 3-17614 in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Exhibit A

Plan of Allocation

This Plan of Allocation is designed to compensate investors based on their losses between January 2011 and April 2014 (the “Relevant Period”) due to the Respondent’s (a) cherry-picking scheme (“Cherry-Picking”); and/or (b) misrepresentation of management fees (“Misrepresentations”). Based upon records obtained by the Commission during its investigation, the Commission has identified those investors, or their lawful successors, who may have suffered losses due to the Respondent’s Cherry-Picking and/or Misrepresentations during the Relevant Period (the “Preliminary Claimants”). Investors who did not suffer losses due to the Respondent’s misconduct during the Relevant Period are ineligible to recover under this Plan.

The Fund Administrator, in collaboration with Commission staff economists using account-level records from broker-dealers, will calculate each Preliminary Claimant’s loss from the Cherry-Picking (“Recognized Loss from Cherry-Picking”) and/or the loss from the Misrepresentations (“Recognized Loss from Misrepresentations”) separately, as follows:

- A. Recognized Loss from Cherry-Picking will be calculated as the sum of his, her, or its But-For Loss minus the sum of his, her, or its First-Day Loss.
 1. But-For Loss is intended to measure the profit a trade would have earned if the trade had earned the same average return as all of the Respondent’s allocated trades (i.e., if the Respondent had not cherry picked profitable trades). But-For Loss is calculated for each opening position allocated by the Respondent to a Preliminary Claimant’s account, and is equal to the dollar value of the opening position multiplied by -0.341976%, the average return on all trades allocated by the Respondent during the Relevant Period.
 2. First-Day Loss is intended to measure the loss a trade earned or sustained as of the time the trade was allocated by the Respondent to the Preliminary Claimant’s account. First-Day Loss calculated for each opening position allocated by the Respondent to a Preliminary Claimant’s account as (a) the realized loss (or profit) resulting from the purchase and sale of a share on the same trading day, or (b) the unrealized loss (or profit) from the purchase of a share until the time the position was allocated to the Preliminary Claimant’s account.

If the Recognized Loss from Cherry-Picking is a negative number, reflecting an overall gain, then the Recognized Loss from Cherry-Picking is \$0.00. For example, if a Preliminary Claimant’s But-For Losses sum to -\$10 and her First-Day Losses sum to -\$100, then her Recognized Loss from Cherry-Picking is $-\$10 - (-\$100)$ or \$90. If a Preliminary Claimant’s But-For Losses sum to $-\$120$ and her First-Day Losses sum to $-\$100$, then her Recognized Loss

from Cherry-Picking is $-\$120 - (-\$100)$ or $-\$20$, which is considered to be \$0 for purposes of this distribution.

- B. Recognized Loss from Misrepresentations was calculated as the sum of his, her, or its management fees paid for shares of Oracle Mutual Fund (symbol: ORGAX) during calendar quarters (Q1 2011 to Q2 2013, inclusive), which is when the Preliminary Claimant paid the Respondent a management fee and an advisory fee. Recognized Loss from Misrepresentations does not include management fees that were later refunded to the Preliminary Claimant.

The sum of a Preliminary Claimant's Recognized Loss from Cherry-Picking and Recognized Loss from Misrepresentations will be totaled to calculate their Recognized Loss. .

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (e.g., class action settlement), to the extent known by the Fund Administrator.

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

Additional Provisions

Allocation of Funds: The total Recognized Losses of all Eligible Claimants exceeds the Net Available Fair Fund, as defined in the Plan, therefore, the distribution will proceed in a *pro rata* fashion and each Eligible Claimant's distribution amount will equal his, her, or its "*Pro Rata Share*" of the Net Available Fair Fund. All distribution amounts will be 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 Fund Administrator 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, he, she, or it 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 receive a Distribution Payment for 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.