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Via Email: rule-comments@sec.gov

Ms. Vanessa Countryman, Secretary
Office of the Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comment on Proposed Plan of Distribution for Administrative Proceeding File No. 3-20855 (AGI US Structured Alpha Funds)

Dear Ms. Countryman:

We write on behalf of certain University of Pittsburgh Medical Center entities (UPMC Master Trust and UPMC Basic Retirement Plan Master Trust) that invested in private funds managed by Allianz Global Investors U.S. LLC ("AGI US") under the Structured Alpha options trading strategy. We respectfully request that the proposed plan of distribution in the above-captioned matter (the "Plan") be modified to ensure that all investors in the Structured Alpha funds are treated equally.

We understand that the Plan "is designed to compensate investors based on their principal losses," and applaud the Division of Enforcement's rationale for the Plan. *See* Plan, Ex. A at 1. We wholeheartedly agree that investors should—to the extent that funds are available—receive equal treatment and that all investors should be compensated equitably. However, we respectfully submit that the Plan may not accomplish this aim.

The Plan limits eligibility to investors who invested in "mutual funds or UCITS funds where AGI US employed the Structured Alpha options trading strategy." Plan, Ex. A at 1. The Plan excludes another group of investors—those who invested in the private funds employing the same strategy. *See id.* The Plan appears simply to assume that investors in the private funds have been fully compensated according to the Plan's formula. We encourage the Division of Enforcement to reconsider this assumption, and instead permit private investors to make claims under the Plan.

The definition of "principal" in the Plan is based on "net asset value per share on . . . February 21, 2020 . . . minus the sum of the sale price (if any) and proceeds received from all

liquidating distributions (if any)." Plan, Ex. A at 1. The Division of Enforcement should consider whether, using this definition, the private fund investors have been fully compensated for their "principal losses". To illustrate, take an investor who invested at $5 per share and saw the investment appreciate to $20 by February 21, 2020. An eligible investor would be entitled to recover up to $20 under the Plan (total, after taking account of any other payments). A private fund investor with the same investment history would be deemed categorically ineligible under the Plan whether the investor had recovered $20, $10, or $5.

We certainly agree that eligibility should be reduced by the amount of payments received from other sources (*e.g.*, redemptions, settlement, or restitution payments). But that does not suggest that private fund investors should be deemed ineligible under the Plan. Rather, investors in private funds who believe that they have not received full principal repayment (under the Plan's definition) should be eligible to apply for funds, and entitled to recover under the same formula applicable to investors in the mutual funds and UCITS funds.

Thus, in the above example, assume that there is $20 to distribute and two investors, one in a mutual fund and one in a private fund. Further assume that the mutual fund investor invested $5, saw that appreciate to $20, but has recovered nothing. Finally, assume that the private fund investor invested $5, saw it appreciate to $20, but recovered $12 from other sources. Under the Plan, the mutual fund investor would recover all $20 and the private fund investor would be short $8. Instead, we believe that the fairer result is to distribute funds so that both investors recover $16. Of course, if there are insufficient funds to make all parties equal, then there might not be sufficient funds to pay private fund investors anything. But unless it is certain at this stage that the available funds will be insufficient, then private fund investors should be eligible as well.

A "deeply engrained principle holds that where multiple people have been victimized, 'all victims of the fraud be treated equally.'" *SEC v. Bivona*, 2017 U.S. Dist. LEXIS 148575, *18-19 (N.D. Cal. Sept. 13, 2017) (quoting *United States v. Real Property Located at 13328 and 13324 State Highway 75 North*, 89 F.3d 551, 553 (9th Cir. 1996)). As a result, courts commonly approve plans that provide pro rata distribution to all investors when there is no reason to distinguish among investors. *See, e.g.*, *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 333 (7th Cir. 2010) (upholding distribution plan where "the idea [was] that all investors should be treated equally"); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 328 (5th Cir. 2001) (affirming distribution plan where "the Receiver determined that the assets should be distributed on a pro rata basis in order to treat the creditors equally because none of the creditors had a 'secured claim . . . or legal preference'"); *SEC v. Byers*, 637 F. Supp. 2d 166, 176 (S.D.N.Y. 2009) (approving distribution plan because "the case law . . . is quite clear that pro rata distributions are the most fair"). Here, the categorical exclusion of private fund investors risks treating them differently without justification.

For that reason, we respectfully request that the Plan be made available to all investors in the Structured Alpha funds using the same formula for compensation. Thank you for your consideration.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ *Matthew Macdonald*
Matthew Macdonald