

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-14863

In the Matter of

UBS FINANCIAL SERVICES INC.
OF PUERTO RICO

Respondent.

PROPOSED PLAN OF
DISTRIBUTION

I. OVERVIEW

1. The Division of Enforcement (“Division”) submits this proposed Plan of Distribution (the “Distribution Plan”) to the United States Securities and Exchange Commission (“Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”).¹ The Distribution Plan proposes a distribution of funds collected by the Commission in the above-captioned proceeding for the benefit of investors of UBS Financial Services, Inc. of Puerto Rico (“Respondent” or “UBS PR”) who invested in any of the twenty-three (23) non-exchange-traded, closed-end funds affiliated with Respondent (“Fund or Funds” or “Eligible Securities”) and who were harmed by Respondent’s omissions or misrepresentations concerning the pricing of their investments from May 15, 2008 through September 30, 2009, and/or by Respondent’s failure to execute marketable sell orders placed by the investors from March 1, 2009 through September 30, 2009. The Funds which comprise the Eligible Securities are:

- PR GNMA & U.S. Government Target Maturity Fund;
- PR Mortgage Backed & U.S. Government Fund;
- PR AAA Portfolio Target Maturity Fund;
- PR AAA Portfolio Bond Fund I;
- PR AAA Portfolio Bond Fund II;
- PR Investors Bond Fund;
- PR Fixed Income Fund I;
- PR Fixed Income Fund II;
- PR Fixed Income Fund III;
- PR Fixed Income Fund IV;
- PR Fixed Income Fund V;
- PR Fixed Income Fund VI;
- PR Tax Free Target Maturity Fund I;
- PR Tax Free Target Maturity Fund II;

¹ 17 C.F.R. § 201.1101.

Tax Free PR Target Maturity Fund;
Tax Free PR Fund I;
Tax Free PR Fund II;
PR Investor's Tax-Free Fund I;
PR Investor's Tax-Free Fund II;
PR Investor's Tax-Free Fund III;
PR Investor's Tax-Free Fund IV;
PR Investor's Tax-Free Fund V; and
PR Investor's Tax-Free Fund VI.

II. BACKGROUND

2. On May 1, 2012, the Commission issued an order (“Order”)² finding that from May 15, 2008 through September 30, 2009, Respondent made misrepresentations and omissions of material facts to investors in Puerto Rico regarding the secondary market liquidity and pricing of the Funds. For example, Respondent claimed that the Funds’ prices were based on market forces such as supply and demand; however, UBS PR did not disclose that the Funds’ prices were set solely at the discretion of its trading desk. Moreover, although Respondent made certain disclosures about the Funds’ liquidity on its website, it did not adequately disclose that as the dominant broker-dealer for the Funds, it controlled the secondary market for the Funds. Any secondary market sales investors wanted to make depended largely on Respondent’s ability to solicit additional buyers or its willingness to purchase shares into its own inventory. In addition, the Commission found that from March 2009 through September 2009, Respondent effectively prevented investors from selling their Fund shares by failing to execute marketable sell orders placed by the investors.

3. In accordance with the Order, Respondent paid \$26,609,739.94 to the Commission that consisted of \$11,500,000.00 in disgorgement, \$1,109,739.94 in prejudgment interest, and a \$14,000,000.00 civil money penalty. The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Respondent paid the total \$26,609,739.94 as ordered (the “Fair Fund”).

4. The purpose and intent of the Distribution Plan is a fair and reasonable distribution of the Fair Fund to investors harmed by Respondent’s conduct described in the Order. The Plan of Allocation, as described in detail in paragraphs 41-47 below, contains two methodologies for calculating investor’s harm: one for mispriced transactions and one for delayed sale transactions.³ The first methodology is identified as the “Mispriced Transactions” in which the Distribution Plan establishes a claims process for Respondent’s investors who bought or sold shares of one or more of the Eligible Securities from May 15, 2008 through September 30, 2009, and whose investments were affected by the misrepresentations and

² See Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 9318 (May 1, 2012).

³ Potential claimants may submit a claim for either or both mispriced transactions and delayed sale transactions, as long as they submit the appropriate documentation with their claim form, as discussed below.

omissions by Respondent regarding pricing of their investment. The second methodology is identified as the “Delayed Sale Transactions,” for those investors who submitted marketable orders to sell between March 1, 2009 and September 30, 2009, that were not executed by Respondent, either in part or in full. For the Delayed Sale Transactions, investors are eligible to submit a claim as long as investors subsequently placed another order to sell shares and the shares were sold by the close of the markets on the day before the publication of the Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”) and incurred harm as defined by the Plan of Allocation, in paragraphs 41 to 47 below.⁴ The Distribution Plan establishes a process in which both data provided by Respondent and through a claims process, will be used to identify potential claimants and to determine whether a potential claimant is eligible to receive a distribution.

5. The Division has concluded that the Distribution Plan as set forth below is fair and reasonable.⁵ The Distribution Plan is subject to approval by the Commission, and the Commission retains jurisdiction and control over the implementation of the Distribution Plan.

III. DEFINED TERMS

6. “Claims Bar Date” means the date established in accordance with the Distribution Plan by which a Potentially Eligible Claimant’s Claim Form must be postmarked to participate in any distribution from the Fair Fund. The Claims Bar Date shall be ninety (90) days from the earliest date of the Summary Notice Publication.

7. “Claims Determination Date” means the date on or before which the Fund Administrator is to reach its final determination concerning the validity and amount of each Potentially Eligible Claimant’s claim. The Claims Determination Date shall be no later than three hundred (300) days following the Claims Bar Date, except as otherwise provided.

8. “Claim Form” means the form designed by the Fund Administrator for the filing of claims in accordance with the terms of the Distribution Plan. The Claim Form will require the tax identification number of the Potentially Eligible Claimant, as well as sufficient documentation reflecting the Potentially Eligible Claimant’s purchases and sales of Eligible Securities during the Relevant Period, as applicable.

9. “Claims Packet” means the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Fund Administrator or to those who request such materials through a website or other appropriate requesting mechanism. These materials will include a copy of the Fair Fund Notice and Claim Form (together with instructions for completion of the Claim Form, in both English and Spanish).

⁴ Commission staff selected this cutoff date to include as many harmed investors as possible, while avoiding the creation of an incentive for investors to sell Fund shares at losses after the Notice is published in order to receive a distribution under the Distribution Plan.

⁵ Consistent with the approach used by district courts when considering whether to approve a distribution plan, the Commission’s objective is to distribute Fair Funds in a fair and reasonable manner, taking into account relevant facts and circumstances. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006), citing *SEC v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991).

10. “Days” means calendar days, unless specified otherwise.

11. “Deficiency Notice” means the notice that will be provided to each Potentially Eligible Claimant whose claim is deemed deficient, in whole or in part, and will contain the reason(s) for the deficiency, notify the Potentially Eligible Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Subject to certain extensions provided for in the Distribution Plan, the deadline to cure deficiencies shall be thirty (30) days from the date of the Deficiency Notice.

12. “Delayed Sale Transaction” means an investor’s Marketable Order to sell that was placed between March 1, 2009 and September 30, 2009, and that Respondent did not execute, either in part or in full. In order to be considered as an Eligible Claimant, the Potentially Eligible Claimant must have later resubmitted an order to sell and sold Fund shares prior to the close of the markets on the day before the publication of the Notice and incurred harm as defined by the Plan of Allocation in paragraphs 41 to 47 below.

13. “Determination Notice” means the notice sent by the Fund Administrator to each Potentially Eligible Claimant who filed a Claim Form with the Fund Administrator, setting forth the Fund Administrator’s conclusions concerning such claim. This will include the determination of the Potentially Eligible Claimant’s eligibility and validity of their claim, including their calculated Net Harm. A Determination Notice shall be provided no later than one hundred and twenty (120) days after the Claims Bar Date.⁶

14. “Distribution De Minimis Amount” means the minimum Distribution Payment of \$10.00. No Eligible Claimant shall receive a Distribution Payment less than the Distribution De Minimis Amount.

15. “Distribution Payment” means a payment to an Eligible Claimant in accordance with the terms of the Distribution Plan.

16. “Distribution Plan” means this Distribution Plan in the form approved by the Commission.

17. “Eligible Claimant” means a Potentially Eligible Claimant who is determined by the Fund Administrator to be eligible for a Distribution Payment from the Net Fair Fund as a result of transactions in Eligible Securities during the Relevant Period. Excluded from Eligible Claimants are:

- (a) The Fund Administrator, its employees, and those Persons assisting the Fund Administrator in its role as Fund Administrator.

⁶ The Determination Notice will also be the Fund Administrator’s written response to the Potentially Eligible Claimants who timely responded to their Deficiency Notice.

- (b) Respondent, its officers or directors, and any affiliates,⁷ assignees, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities.
- (c) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations found in the Order or any related Commission action.
- (d) Any affiliates, assignees, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities described in paragraph 17 (a)-(c) above.
- (e) Any assignee of another Person's right to obtain a recovery in the Commission's action against Respondent; however, this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

18. "Eligible Securities" means investments in one or more of the Funds listed in paragraph 1 above.

19. "Fair Fund" means the fund created by the Commission for the benefit of investors harmed by Respondent's violations discussed in the Order pursuant to Sarbanes-Oxley Act of 2002, Section 308(a), as amended. The Fair Fund consists of disgorgement of \$11,500,000., prejudgment interest of \$1,109,739.94 and a civil money penalty of \$14,000.00 for a total of \$26,609,739.94.

20. "Fair Fund Notice" means the written notice from the Fund Administrator to Potentially Eligible Claimants informing them of the Fair Fund and the eligibility requirements, and explaining how to submit a Claim Form. The Fair Fund Notice will be in both Spanish and English and will be mailed, published and available online pursuant to paragraph 49, below.

21. "Fair Fund Website" means the website established and maintained by the Fund Administrator, which is devoted solely to the Fair Fund. The Fair Fund Website is located at www.UBSPRFairFund.com.

22. "Final Determination Notice" means the Fund Administrator's written reply to each Potentially Eligible Claimant who timely responded to the Deficiency Notice and sought reconsideration of their Determination Notice, or those Potentially Eligible Claimants that sought reconsideration of a denied claim or disputed the calculation of Net Harm.

23. "Fund" or "Funds" means one or more of the twenty-three (23) non-exchange-traded closed-end funds affiliated with Respondent and identified in paragraph 1 above.

⁷ As used herein, "affiliate" shall have the meaning described in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

24. “Fund Administrator” means A.B. Data, Ltd., the firm the Commission appointed as fund administrator for this Fair Fund distribution.⁸ The Fund Administrator is a class action notice and claims administrator with a principal business office located in Milwaukee, WI.

25. “Marketable Order” means an investor’s order to sell a Fund share at a price that was equal to or less than the Fund share’s price listed in the Puerto Rico newspaper, *El Vocero*, on the day the order was placed before the close of the markets.⁹

26. “Mispriced Transaction” means an investor’s purchase of Fund shares at an inflated price and/or sale of Fund shares at a depressed price because of Respondent’s misconduct described in the Order during the time period May 15, 2008 through September 30, 2009.

27. “Net Fair Fund” means the Fair Fund, plus accumulated interest and earnings thereon, minus all taxes, fees, and other expenses paid by the Fair Fund.

28. “Net Harm” means an Eligible Claimant’s total harm due to the misconduct described in the Order, less any benefit that the Eligible Claimant may have realized as a result of the misconduct. Harm and benefit are both calculated, as described in the methodology detailed in the Plan of Allocation, paragraphs 41-47 below.

29. “Person” means an individual as well as a legal entity, such as a corporation, partnership, or limited liability company.

30. “Plan of Allocation” means the provisions in paragraphs 41-47 below, which describe the methodology used to calculate the Net Harm for an Eligible Claimant.

31. “Potentially Eligible Claimant” means any Person identified by the Fund Administrator as having a possible claim to recover from the Net Fair Fund under the Distribution Plan, or any Person that asserts having a possible claim to recover from the Net Fair Fund under the Distribution Plan.

32. “Relevant Period” includes both Relevant Period 1 and Relevant Period 2 throughout the Distribution Plan, unless specifically stated as either:

- (a) “Relevant Period 1” means the period from May 15, 2008 through September 30, 2009 (Mispriced Transactions); or,

⁸ See Order Appointing a Fund Administrator and Approving Fund Administrator Bond, Exchange Act Rel. No. 68600 (Jan. 8, 2013).

⁹ As described in the Order, UBS PR did not disclose in the *El Vocero* listings that the Fund share’s prices represented only what UBS PR termed “indicative” prices. Indicative prices were what UBS PR thought the prices should be, and did not represent any commitment by UBS PR to buy or sell at those prices. In addition, UBS PR failed to disclose that these prices included a 3% mark up for its sales commission.

- (b) “Relevant Period 2” means the period from March 1, 2009 through September 30, 2009 (Delayed Sale Transactions).

33. “Request for Reconsideration” means the procedure by which a Potentially Eligible Claimant can dispute either the denial of a claim or the calculated Net Harm amount, as stated within their Determination Notice. A Potentially Eligible Claimant who wishes to dispute the calculated Net Harm or seek reconsideration of a denied claim must advise the Fund Administrator, in writing, by requesting such reconsideration by the Request for Reconsideration Deadline.

34. “Request for Reconsideration Deadline” means the date established in accordance with the Distribution Plan by which a Potentially Eligible Claimant can dispute either the denial of a claim or the calculated Net Harm amount, as stated within their Determination Notice. Subject to certain extensions provided for in the Distribution Plan, the deadline to file such requests shall be 30 days from the date of the Determination Notice.

35. “Summary Notice Publication” means the notice published on an Internet-based newswire service and one or two newspapers in Puerto Rico, in both Spanish and English. Such notice (the text of which shall be approved by Commission staff) shall include, at a minimum, a statement that the Fair Fund relates to the purchases and sales of Eligible Securities during Relevant Period 1 and non-executed Marketable Orders to sell Eligible Securities during Relevant Period 2, and the means of obtaining a Claims Packet.

36. “Tax Administrator” means Damasco & Associates LLP, the tax administrator appointed by the Commission,¹⁰ to be responsible for all income tax related reporting requirements including the preparation and filing of tax returns.

IV. FAIR FUND ADMINISTRATION

A. Fund Administrator

37. The Fund Administrator will be entitled to reasonable administrative costs and expenses in connection with the administration and distribution of the Fair Fund (including any such costs and expenses incurred by agents, consultants or third-parties retained, after consultation with and approval of the Commission staff, by the Fund Administrator in furtherance of its duties).¹¹ Commission approved fees and expenses will be paid from the Fair Fund.

B. Bond Requirement

38. Rule 1105(c) of the Rules¹² requires that the Fund Administrator “obtain a bond in the manner prescribed in 11 U.S.C § 322, in an amount to be approved by the Commission.”

¹⁰ See Order Appointing Tax Administrator, Exchange Rel. Act No. 67042 (May 22, 2012).

¹¹ Rule 1105(d) of the Rules, 17 C.F.R. § 201.1105(d).

¹² 17 C.F.R. § 201.1105(c).

The Fund Administrator has obtained a bond in the amount of \$26,609,739.94 as required by the Commission.

C. Tax Administrator

39. The Tax Administrator is required to administer the Fair Fund as a Qualified Settlement Fund under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is responsible for all income tax related reporting requirements including the preparation and filing of tax returns. The Tax Administrator will provide tax-related services for the Fair Fund in accordance with its “Letter Agreement for the Calendar Years Ending December 2011 and 2012” (the “Letter Agreement”) with the Commission. All taxes will be paid from the Fair Fund, upon the approval of the Commission staff. The Fund Administrator will cooperate with the Tax Administrator in providing any information necessary for income tax compliance.

40. The Tax Administrator will be entitled to reasonable fees and expenses pursuant to the Letter Agreement and those fees and expenses will be paid from the Fair Fund, upon approval of the Commission staff.

D. Plan of Allocation

41. Each Eligible Claimant will receive a Distribution Payment from the Net Fair Fund for Net Harm as calculated by the methodology in this paragraph.

(a) Definitions:

- (i) “Daily ‘but for’ Share Price” is an estimate of the price at which a Fund would have traded if the Respondent’s misconduct had not occurred.¹³ Exhibit A contains the “but for” share price for each Fund expressed as a dollar value on each trading date during the Relevant Period.
- (ii) “Daily Per-Share Inflation” for a Fund is the difference between the Fund’s reported share price and the Fund’s “but for” share price on a given day during the Relevant Period. The per-share inflation for each Fund expressed as a dollar value on each trading date during the Relevant Period is reported in Exhibit B. A negative value in Exhibit B means that

¹³ The “but for” share price is derived as follows: For each month from January 2006 through April 2008, which is the period before the Respondent’s misconduct, and for each Fund the ratio of the reported share price to the reported NAV (net asset value) was calculated. The monthly values were averaged to arrive at the average price-to-NAV ratio for each Fund. Then during the period of misconduct, each Fund’s reported NAV was multiplied by the Fund’s average price-to-NAV ratio to derive the “but for” price. On dates during the Relevant Period when the Fund’s NAV was not reported, the “but for” price was interpolated by assuming a uniform daily change from the date of the last available NAV to the date of the next available NAV. The “but for” prices are adjusted for capital distributions by the Funds, where applicable. For two Funds that had insufficient data to calculate an average price-to-NAV ratio, data from comparable Funds were used to construct “but for” prices and “daily per-share inflation.”

the misconduct is estimated to have caused the Fund's reported share price to be lower than it would have been.

(b) Harm and benefit calculations for Mispriced Transactions during Relevant Period 1:

- (i) To determine the harm or benefit to a Potentially Eligible Claimant in a single transaction, find the entry in Exhibit B referring to the relevant Fund and trade date. This number is the per-share inflation specific to that Fund and trade date.
- (ii) Multiply the per-share inflation from Exhibit B by the number of shares bought or sold in the transaction. Because buying and selling shares have opposite effects on an investor's Net Harm (*e.g.*, selling shares at an inflated price benefits investors, but buying shares at an inflated price harms investors), multiply the result by negative one (-1) for sales transactions. The resulting figure represents the harm (positive number) or benefit (negative number) attributed to the misconduct resulting from the Mispriced Transaction.¹⁴

Example 1, Purchase at an Inflated Price: Assume that an investor purchased 5,000 shares of Tax Free PR Fund II on June 3, 2008. According to Exhibit B, the per-share inflation for that Fund was \$0.56 on June 3, 2008. The investor's harm would be \$2,800 (5,000 multiplied by \$0.56). In other words, the investor was harmed because the investor paid \$2,800 more for 5,000 shares than if the misconduct had not occurred.

Example 2, Sale at an Inflated Price: If the same investor sold 1,000 shares of Tax Free PR Fund II on March 3, 2009, the investor benefited by selling the shares at an inflated price. According to Exhibit B, the per-share inflation for that fund was \$1.72 on March 3, 2009. The investor received \$1,720 (1,000 multiplied by \$1.72) more than the investor would have if the misconduct had not occurred, and the investor's benefit from this transaction is \$1,720. To offset the benefit calculations against the harm calculations, each calculated benefit amount is reflected as a negative value. The offset is performed by multiplying the effects

¹⁴ For some Funds, on certain dates, the transaction prices were depressed, or lower than they would have otherwise been because of the misconduct. Exhibit B shows negative daily per-share inflation amounts for these Funds on these dates. Individuals who purchased shares at depressed prices realized a benefit from these transactions. Individuals who sold shares at depressed prices were harmed from these transactions. Examples 3 and 4 illustrate the calculations of harm and benefit to investors from transactions at depressed prices.

of all sales transactions by negative one (\$1,720 multiplied by -1 = -\$1,720).

Example 3, Purchase at a Deflated Price: If an investor purchased 1,000 shares of the PR Tax Free Target Maturity Fund I on August 19, 2008, the investor realized a benefit by purchasing the shares at a lower price than if the misconduct had not happened. Exhibit B shows that the daily per-share inflation was -\$0.23. This means that the Fund was underpriced by \$0.23. The investor's benefit is -\$230 (1,000 multiplied by -\$0.23). The benefit is recorded as a negative number because these values will be an offset to the harm calculation. Since the transaction was a purchase, the transaction is not multiplied by negative one.

Example 4, Sale at a Deflated Price: If, instead of purchasing Fund shares, the investor sold 1,000 shares of the PR Tax Free Target Maturity Fund I on August 19, 2008, the investor would have been harmed by selling the Fund shares at a reduced price. The investor's harm would be -\$230 (1,000 multiplied by -\$0.23). Because this transaction was a sale rather than a purchase, the total is multiplied by negative one, to ensure that harm and benefit are appropriately offset. The value that will be included in the Net Harm calculation from this transaction is \$230 (-\$230 multiplied by -1).

(c) Harm calculations for Delayed Sale Transactions during Relevant Period 2:

- (i) To determine an investor's harm from a Delayed Sale Transaction, first identify the Fund, the requested transaction date, and the actual transaction date. The requested transaction date must be during Relevant Period 2. The investor's harm will be calculated based on the difference between the "but for" price on the requested date and the "but for" price on the actual transaction date. The "but for" prices to be used for Relevant Period 2 are reported in Exhibit A.
- (ii) For an investor with a Delayed Sale Transaction, the investor's harm will be calculated as the highest "but for" price during the period between the requested transaction date (inclusive) and the actual transaction date (inclusive) minus the "but for" price on the date that the Marketable Order was executed, multiplied by the number of Fund shares transacted.¹⁵

¹⁵ If the "but for" price on the transaction date is the highest "but for" price during this period, then the investor is not deemed to be harmed.

Example 5: An investor submitted a Marketable Order to sell 1,000 shares of the PR Fixed Income Fund I on June 30, 2009, that expired unfulfilled at the end of the day. The investor's Marketable Order to sell was executed on July 27, 2009, when the "but for" price was \$7.01. Since the highest "but for" price for that fund during the period between June 30, 2009 and July 27, 2009 was \$7.36 (on June 30, 2009), this investor was harmed \$350 ($\7.36 minus $\$7.01 = \0.35 multiplied by 1,000). *See Exhibit A, pg. 7.*

Example 6: An investor submitted a good till canceled limit Marketable Order to sell 1,000 shares of PR Fixed Income Fund I on June 22, 2009. Despite being a Marketable Order, the order was not executed until July 27, 2009, when the "but for" price was \$7.01. During the time the Marketable Order was open, the highest "but for" price was \$7.38 (on June 22, 2009). This investor would have been harmed \$370 ($\7.38 minus $\$7.01 = \0.37 multiplied by 1,000). *See Exhibit A, pg. 6.*

- (iii) If the requested transaction date falls after the end of Relevant Period 2 and before the close of markets on the day before the publication of the Notice, the "but for" price for the sales transaction will be equal to the actual transaction price.

(d) Net Harm Calculation and Distribution DeMinimis Amount

- (i) To determine the Net Harm, sum the calculated harm and benefit across all Mispriced Transactions and Delayed Sale Transactions for the Potentially Eligible Claimant. A total greater than zero means that the Potentially Eligible Claimant incurred Net Harm and is an Eligible Claimant under the Distribution Plan. A total equal to or less than zero means that the Potentially Eligible Claimant did not incur Net Harm and is, therefore, not an Eligible Claimant under the Distribution Plan.
- (ii) No Eligible Claimant shall receive a Distribution Payment less than the Distribution De Minimis Amount (\$10.00).

42. The Fund Administrator may, but is not required to, aggregate an Eligible Claimant's claims for purposes of determining the Distribution Payment and/or to meet the Distribution De Minimis Amount.

43. For Mispriced Transactions, the Fund Administrator will determine each Eligible Claimant's share of the Net Fair Fund based on a valid Claim Form submitted by the Eligible Claimant for Mispriced Transactions.

44. For Delayed Sale Transactions, the Fund Administrator will use transaction data provided by Respondent that includes, among other information, unexecuted Marketable Orders

to sell to identify Potentially Eligible Claimants that were harmed as a result of Delayed Sale Transactions and to determine each Potentially Eligible Claimant's share of the Net Fair Fund. The Fund Administrator will also use documentary evidence, if any, provided by Potentially Eligible Claimants in connection with the claims process to determine the Potentially Eligible Claimant's share of the Net Fair Fund.

45. In any instance where the transaction data provided by Respondent conflicts with the documentary evidence provided by the Potentially Eligible Claimants, the Fund Administrator will make the final determination as to the Distribution Payment, if any, which the Potentially Eligible Claimants will receive.

46. If the Net Fair Fund amount exceeds the total Net Harm, the Distribution Payments made to Eligible Claimants will equal their Net Harm provided their calculated Net Harm is equal to or greater than the Distribution De Minimis Amount.¹⁶ If the total Net Harm exceeds the Net Fair Fund amount, there will not be enough money in the Net Fair Fund to pay Eligible Claimants their full Net Harm. Consequently, the Fund Administrator will divide the Net Fair Fund amount by the total dollar value of Net Harm for all valid claims submitted to obtain a *pro-rata* percentage ("*Pro-Rata Percentage*"). The Fund Administrator will multiply each Eligible Claimant's Net Harm by the *Pro Rata Percentage* to determine each Eligible Claimant's distribution amount. For example, if the sum of the Net Harm of all Eligible Claimants is \$40 million and the Net Fair Fund is \$25 million, a claimant would receive a distribution amount equal to 62.5% (\$25 million divided by \$40 million) of the claimant's calculated Net Harm. The investor in Example 5 above, with \$350 in Net Harm would receive \$218.75, assuming the investor had only that one Delayed Sale Transaction.

47. Distribution Payments will be made to Eligible Claimants after all claims have been processed and after approval has been received from the Commission.

E. Identification of and Notification to Potentially Eligible Claimants

48. The Fund Administrator will insofar as practicable, use its best efforts to identify Potentially Eligible Claimants from a review of trading records, account information provided by the Respondent, registered broker-dealers and investment advisors and any other sources available to it. The Fund Administrator may also engage a third-party firm, after consultation with and approval of the Commission staff, to assist in identifying Potentially Eligible Claimants to maximize the participation rate in the distribution of the Fair Fund.

49. Following the entry by the Commission of its order approving the Distribution Plan, the Fund Administrator will:

- (a) Design a Claims Packet, including a Fair Fund Notice and Claim Form, which will be submitted to the Commission staff for review and approval.

¹⁶ If there are enough monies remaining after compensating the Eligible Claimants for their Net Harm, each Eligible Claimant may also receive reasonable interest on their Net Harm.

- (b) Create a mailing and claims database of the Potentially Eligible Claimants.
- (c) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Potentially Eligible Claimants is up-to-date.
- (d) Mail by United States First Class Mail a Claims Packet to each Potentially Eligible Claimant known to the Fund Administrator in both English and Spanish. Each Fair Fund Notice will notify the Potentially Eligible Claimant of the Fair Fund, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Claim Form by mail or from the Fair Fund Website, and identify ways to submit a claim.
- (e) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund Website, located at www.UBSPRFairFund.com will make available a copy of the approved Distribution Plan; provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions; include in a downloadable form, the Claim Form and other related materials; and, such other information covering the process or substance that the Fund Administrator believes will be beneficial to Potentially Eligible Claimants, all of which will be provided in both English and Spanish.
- (f) Publish a Summary Notice Publication of the Fair Fund on the internet and in up to two (2) newspapers in Puerto Rico, in both English and Spanish, in a manner deemed appropriate by the Fund Administrator and not unacceptable to the Commission staff. The first notice will appear within ten (10) days of the initial mailing of the Fair Fund Notice.
- (g) Within ten (10) days of the Commission's approval of the Distribution Plan, establish and maintain a toll-free phone number by which Potentially Eligible Claimants can obtain information about the Fair Fund. The toll-free phone number will offer the service of live representatives during regular business hours and prerecorded messages during non-business hours. The toll-free call center will provide English and Spanish prerecorded messages and speakers. The toll-free phone number will be listed on all correspondence from the Fund Administrator to Potentially Eligible Claimants as well as on the Fair Fund Website.
- (h) Establish and maintain a traditional mailing address and an email address, info@UBSPRFairFund.com, which will be listed on all correspondence from the Fund Administrator to Potentially Eligible Claimants as well as on the Fair Fund Website. The Fund Administrator will have the ability to respond to emails in English and Spanish.

50. Commission staff retains the right to review and approve any material mailed, published, or posted on the Fair Fund Website.

51. On an on-going basis up until the Claims Bar Date, after the Claims Packets are mailed to all known Potentially Eligible Claimants, the Fund Administrator shall continue to supply Claims Packets to Potentially Eligible Claimants who contact the Fund Administrator requesting a copy via mail, phone or email.

52. The Fund Administrator will attempt to locate any Potentially Eligible Claimant whose Claims Packet is returned by the U.S. Postal Service (“USPS”) as “undeliverable.” The Fund Administrator shall immediately re-mail any returned undelivered mail for which the USPS has provided a forwarding address.

53. Additionally, the Fund Administrator may engage a third-party search firm to conduct more rigorous searches for missing Potentially Eligible Claimants. The Fund Administrator will utilize all means reasonably available, including LexisNexis, to obtain updated addresses in response to undeliverable notices, and forward any returned mail for which an updated address is provided or obtained. The Fund Administrator will make available, upon request by the Commission staff, a list of all Potentially Eligible Claimants whose Claims Packets have been returned as “undeliverable” due to incorrect addresses and for which the Fund Administrator has been unable to locate current addresses.

F. Claims Process and Handling of Disputes

54. In all materials that refer to the Claims Bar Date deadline, the filing deadline will be clearly identified with the date, which is ninety (90) calendar days from the earliest date of the Summary Notice Publication as described in paragraph 35 above.

55. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant must submit to the Fund Administrator a properly completed Claim Form reflecting such Potentially Eligible Claimant’s claim, together with all required supporting documentation. The burden will be upon the Potentially Eligible Claimant to ensure that their Claim Form has been properly and timely received by the Fund Administrator. A Claim Form that is postmarked after the Claims Bar Date will not be accepted unless the deadline is extended by the Fund Administrator for good cause shown, after consultation with the Commission staff.

56. Claim Forms must be properly filled out per the instructions provided by the Fund Administrator, and must be accompanied by such documentary evidence as the Fund Administrator deems necessary to substantiate the claim, including, but not limited to, evidence of holdings, purchases, requests for sales, and/or sales of shares of any of the Eligible Securities. Without limitation, this information may include third-party documentary evidence of purchases and dispositions of Eligible Securities during the Relevant Period, as well as holdings of Eligible Securities on pertinent dates.

57. All Claim Forms and supporting documentation necessary to determine a Potentially Eligible Claimant’s eligibility to receive a Distribution Payment from the Net Fair Fund under the terms of the Distribution Plan must be verified by a declaration executed by the

Potentially Eligible Claimant under penalty of perjury under the laws of the United States of America. The declaration must be executed by the Potentially Eligible Claimant, unless the Fund Administrator accepts such declaration from a Person authorized to act on the Potentially Eligible Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems necessary.

58. The Fund Administrator will review each Claim Form to determine the validity and amount of such Potentially Eligible Claimant's claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of their claim, and that they qualify 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.

59. Within sixty (60) days of the Claims Bar Date, a Deficiency Notice will be provided to each Potentially Eligible Claimant whose claim is deemed deficient, in whole or in part, and will state the reason(s) why the claim is deficient (*e.g.*, failure to provide required information or documentation). It will also notify the Potentially Eligible Claimant of the opportunity to cure such deficiency, including instructions regarding what is required to do so. Any Potentially Eligible Claimant who is notified of a deficiency shall have thirty (30) days from the date of the Deficiency Notice to cure any deficiencies. If an attempt to cure is timely received by the Fund Administrator, the Determination Notice will notify the Potentially Eligible Claimant of the Fund Administrator's conclusion regarding the status of the claim. See paragraph 60, below.

60. The Fund Administrator will provide a Determination Notice to each Potentially Eligible Claimant who has filed a Claim Form with the Fund Administrator, setting forth the Fund Administrator's conclusions concerning such claim, including eligibility, validity, and the amount of Net Harm calculated. The Determination Notice shall be provided no later than one hundred and twenty (120) days after the Claims Bar Date. In the event the Determination Notice denies the claim, the Fund Administrator shall advise each Potentially Eligible Claimant of the basis for the denial of the claim.

61. A Potentially Eligible Claimant who wishes to dispute the calculated Net Harm or seek reconsideration of a denied claim must advise the Fund Administrator, in writing, by requesting such reconsideration within thirty (30) days of the date of their Determination Notice. Following subsequent review, the Fund Administrator will respond to the request and notify the Potentially Eligible Claimant of its decision, by sending a Final Determination Notice within sixty (60) days following the date the request is received by the Fund Administrator, or such longer time as the Fund Administrator determines is necessary for a proper determination to be made concerning the claim. The Final Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim.

62. The Fund Administrator will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case-by-case basis. In accordance with the Distribution Plan, all decisions made by the Fund Administrator will be final.

63. All Potentially Eligible Claimants have the burden of notifying the Fund Administrator of any changes to their name or mailing address.

64. The receipt of Eligible Securities by gifts, inheritance, devise, or operation of law will not be deemed to be a purchase of Eligible Securities, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in the instrument of inheritance. However, the recipient of Eligible Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Distribution Plan. Only one Claim Form may be submitted with regard to the same transactions in Eligible Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

65. To the extent that an Eligible Claimant, their representative, heir, successor, or assignee requests a Distribution Payment to be issued or reissued in a different name than the Eligible Claimant (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), the Fund Administrator will honor such request upon receipt of a written request and supporting documentation, which the Fund Administrator in its sole discretion deems appropriate to substantiate the request.

66. Claim Forms submitted 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 such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Fund Administrator will distribute any Distribution Payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

G. Distribution of the Fair Fund

67. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of the Distribution Plan. An Eligible Claimant's Net Harm, as determined in accordance with the methodology detailed in the Plan of Allocation in paragraphs 41 - 47 above, will be used to determine the amount of their Distribution Payment.

68. The Fund Administrator will distribute the Net Fair Fund to all Eligible Claimants only after all Claim Forms have been processed and all Potentially Eligible Claimants whose claims have been denied, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth above.

69. Prior to distribution, a reserve will be established for future taxes, payment of the fund administrator and the tax administrator, and post-distribution contingencies. Any monies remaining in the reserve after the Commission approves the final accounting will be transferred to the United States Treasury.

70. Within one hundred and twenty (120) days following the issuance of the last Final Determination Notice, the Fund Administrator shall prepare a list of Eligible Claimants, the amount of each Eligible Claimant's Net Harm, and the Distribution Payment (the "Payment File").

71. 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 the Distribution Plan; and (b) is accurate as to Eligible Claimants' names, addresses, Net Harm amounts, and Distribution Payment.

72. Upon receipt and review of the validated Payment File and reasonable assurances letter, the Commission staff will seek an order from the Commission to disburse the Fair Fund pursuant to Rule 1101(b)(6) of the Rules.¹⁷ Upon issuance of an order by the Commission, Commission staff will direct the transfer of Net Fair Fund monies to the "Escrow Account," established as described below in paragraphs 73-78 below. The Fund Administrator will then use its best efforts to disburse the Net Fair Fund monies within a reasonable time from the release of the monies into the Escrow Account ("Distribution Date").

73. Prior to the disbursement of the Net 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 Commission staff.

74. The Fund Administrator will establish an escrow account ("Escrow Account") pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the Commission staff, in the name of and bearing the Employer Identification Number ("EIN") of the Qualified Settlement Fund. The Fund Administrator shall also establish with the Bank a separate "Deposit Account" (*e.g.*, controlled distribution account, managed distribution account, link checking and investment account) for the purpose of funding distribution payments to be distributed to Eligible Claimants by the Fund Administrator pursuant to the Distribution Plan. The name of the Escrow Account will be in the following form: Name of Escrow Account, TIN, as custodian for the benefit of investors allocated a payment pursuant to the Distribution Plan in In the Matter of UBS Puerto Rico, Administrative Proceeding File No. 3-14863.

75. 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; provided, however, that the money market mutual funds' investments in short term United States Treasury securities will not be made through repurchase agreements or other derivative products. The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund

¹⁷ 17 C.F.R. § 201.1101(b)(6).

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

76. The Fund Administrator shall deposit or invest the Net Fair Fund monies 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 Commission staff, the Fund Administrator shall work with the Bank on an ongoing basis to determine an allocation of the Net Fair Fund monies between the Escrow and Deposit Accounts.

77. All interest earned will accrue for the benefit of the Fair Fund, and all costs associated with the Escrow Account will be paid from the Fair Fund.

78. All Net Fair Fund monies shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All Fair Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls (*e.g.* check number and check amount) before they are honored by the Bank, at which time the Net Fair Fund monies will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

79. All checks will be issued by the Fund Administrator from the Deposit set-up at the Bank. All checks will bear a stale date of one hundred and twenty (120) days from the date of issue. Checks that are not negotiated within the stale date will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided in paragraphs 81-86 below. 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 monies will remain in the Net Fair Fund. If a check reissue has been requested before the stale date, such request is governed by paragraph 84 below.

80. All Distribution Payments will be preceded or accompanied by a communication in both English and Spanish 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 Eligible Claimant and that the Eligible Claimant should consult a tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one hundred and twenty (120) days from the date the original check was issued; and (d) contact information for the Fund Administrator to be used by Eligible Claimants for questions regarding the distribution. All such correspondence will be submitted to Commission staff for review and approval. Distribution checks, on their face or in an accompanying mailing, will state that the Distribution Payment is from a Fair Fund established by the Commission for the benefit of investors for harm as a result of securities law violations.

H. Post Distribution; Handling Returned or Un-Cashed Distributions

81. The Fund Administrator is responsible for researching and reconciling all returned checks due to non-delivery, insufficient addresses, and/or any other deficiencies.

82. 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 USPS.

83. 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 and 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 sixty (60) days after issuance or sixty (60) days after the stale date of the original check, whichever is later.

84. The Fund Administrator will re-issue new checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimants prior to the initial stale date. Such reissued checks will be void if not negotiated by sixty (60) days after issuance or sixty (60) days after the stale date of the original check, whichever is later.

85. In cases where an Eligible Claimant is unable to endorse a distribution check as written or received (*e.g.*, name changes, IRA custodian changes, or Eligible Claimant is deceased) and the Eligible Claimant or a lawful representative requests the reissuance of a Distribution Payment 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 such change request is properly documented, the Fund Administrator will issue an appropriately redrawn check or electronically issue a Distribution Payment to the Eligible Claimant.

86. If any of the Net Fair Fund remains after the distribution, Commission staff may at its discretion direct the Fund Administrator to allocate those remaining monies on a pro-rata basis to all Eligible Claimants who cashed their initial distribution check or received an electronic payment and who would receive at least \$10.00 from a subsequent distribution. If, after consultation between the Fund Administrator and Commission staff, a second tranche distribution is not deemed cost effective, the remaining monies in the net Fair Fund will be transmitted to the Commission for transfer to the United States Treasury.

I. Website and Toll-Free Number

87. 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 monies to the Commission.

J. Filing of Reports and Accountings

88. The Fund Administrator shall provide the Commission a quarterly case 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.

89. The Fund Administrator is responsible for accounting for all payments and transactions related to the Fair Fund. Upon final distribution of the Net Fair Fund, the Fund Administrator shall make arrangements for the final payment of taxes and after all other fees are paid, the Fund Administrator will submit a final accounting to the Commission on a standardized accounting form provided by Commission staff for approval by the Commission, prior to the discharge of the Fund Administrator and cancellation of the Fund Administrator's bond.

K. Fair Fund Termination

90. The Fair Fund shall be eligible for termination, and the Fund Administrator eligible for discharge and cancellation of its bond, 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 monies have been paid to the Commission for transfer to the United States Treasury.

91. Once the Fair Fund has been terminated and remaining monies, if any, are transferred to the United States Treasury, no further claims will be allowed and no additional payments will be made whatsoever.

L. Document Retention

92. Pursuant to Commission staff direction, the Fund Administrator will either turn over to the Commission or destroy all documents, including documents in any media, six (6) years after the Commission's approval of the final accounting.

M. Limitation of Liability

93. When administering the Distribution Plan, the Fund Administrator and/or their designees, agents and assignees, may rely on: all applicable law, 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.

94. The submission of the Claim Form and the receipt and acceptance of a Distribution Payment by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against any party (other than the Fund Administrator).

N. Amendments

95. The Fund Administrator will take reasonable and appropriate steps to disburse the Fair Fund according to the Distribution Plan. The Fund Administrator will inform Commission staff of any changes needed in the Distribution Plan. Upon agreement with Commission staff, the Fund Administrator may implement immaterial changes to the Distribution Plan to effectuate its purposes. If a change is deemed to be material by Commission staff, Commission approval is

required prior to implementation of the change by amending or modifying the approved Distribution Plan.

96. For good cause shown, and after consultation with the Commission staff, any of the procedural deadlines set forth in the Distribution Plan may be extended by the Fund Administrator.

V. NOTICE AND COMMENT PERIOD

97. The Notice will be published in the SEC Docket and on the Commission's website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Distribution Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the publication of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an email to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-14863" in the subject line. Comments received will be available to the public. Persons should only submit comments that they wish to make publicly available.