

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16852

In the Matter of

**Focus Media Holding Limited and
Jason Jiang,**

Respondents.

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PROPOSED PLAN OF DISTRIBUTION

I. INTRODUCTION

1. The Division of Enforcement submits this proposed plan of distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for distribution of funds collected in the above-captioned matter to compensate investors harmed by securities violations of Focus Media Holding Limited (“Focus Media”) and Jason Jiang (“Jiang”) (collectively, the “Respondents”) as described in the Order.¹

2. The Commission’s Order found that, in 2009 and 2010, the Respondents negligently failed to disclose accurate information concerning Focus Media’s partial sale of securities in its wholly owned subsidiary Allyes Online Media Holdings Ltd (“Allyes”) to certain Allyes and Focus Media insiders based on favorable valuation, months before both the insiders and Focus Media sold their interest in Allyes to a private equity firm at nearly six times the valuation that had been used to determine the price the Allyes and Focus Media insiders had

¹ See Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order, Securities Act Rel. No. 9933 (Sept. 30, 2015).

paid. The Order required Respondents to pay a total of \$55,627,865.43 in disgorgement, prejudgment interest, and civil money penalties to the Commission.

3. The Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the \$55,627,865.43 paid by the Respondents, pursuant to the Order, to be distributed to harmed investors. The Fair Fund is currently deposited in a Commission designated interest bearing account at the United States Department of the Treasury's Bureau of Fiscal Services ("BFS"), where it will be held until a disbursement occurs. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. It is not anticipated that the Fair Fund will receive additional funds, other than accumulated interest and earnings from investments. All BFS fees will be paid by the Fair Fund.

4. On June 9, 2016, the Commission issued an order appointing Damasco & Associates LLP, now known as Miller Kaplan Arase LLP ("Miller Kaplan"), as the tax administrator ("Tax Administrator") of the Fair Fund.²

5. On April 11, 2017, the Commission issued an order appointing Analytics Consulting, LLC ("Analytics") as the fund administrator ("Fund Administrator") of the Fair Fund.³ Pursuant to the order, Analytics obtained a bond in accordance with Rule 1105(c) of the Rules, 17 C.F.R. § 201.1105(c), in the amount of \$55,627,865.43. The amount of the bond premium will be paid from the Fair Fund.

6. All reasonable administrative costs and expenses of the distribution, including the fees and expenses of the Fund Administrator and Tax Administrator will be paid from the Fair

² See Order Appointing Tax Administrator, Exchange Act Rel. No. 78028 (June 9, 2016). See also Notice of Name Change of Appointed Tax Administrator, Exchange Act Rel. No. 81064 (June 30, 2017).

³ See Order Appointing Fund Plan Administrator and Setting Bond Amount, Exchange Act Rel. No. 80436 (Apr. 11, 2017).

Fund. The Fund Administrator will submit invoices to Commission staff for approval by the Commission, pursuant to the Rules.

7. The Fund Administrator and Commission staff have concluded that distributing funds pursuant to the Plan is a fair and reasonable way to compensate investors harmed as the result of the Respondents' misconduct.

8. The Plan contains notice and comment procedures set forth in paragraph 82 below. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

II. DEFINED TERMS

9. “**Affiliate**” shall have the meaning set forth in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101(2).

10. “**Claim Deficiency Notice**” shall mean a notice from the Fund Administrator to each Potential Investor whose claim is deemed deficient, in whole or in part, and will contain the reason(s) for the deficiency, notify the Potential Investor of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Subject to certain extension provided for in the Plan, the deadline to cure deficiencies shall be thirty (30) days from the date of the Claim Deficiency Notice.

11. “**Claim Form**” means the form designed by the Fund Administrator for the filing of claims in accordance with the terms of the Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Potential Investor's purchases and dispositions of Eligible Securities during the Relevant Period, and the tax identification number of the Potential Investor.

12. **“Claims Bar Date”** means the date established in accordance with the Plan by which Claim Forms must be postmarked or submitted electronically in order to receive consideration under the Plan. Subject to certain extensions provided for in the Plan, the Claims Bar Date will be one hundred twenty (120) days from the initial Summary Notice Publication.

13. **“Claims Determination Date”** shall mean the date on or before which the Fund Administrator is to reach its final determination concerning the validity and amount of each Potential Investor’s claim. The Claims Determination Date shall be no later than two hundred ninety days (290) following the Claims Bar Date, except as otherwise provided.

14. **“Claims Packet”** means the materials relevant to submitting a claim that may be provided to Potential Investors known to the Fund Administrator or to those who request such materials through a website or other appropriate delivery mechanisms prior to the Claims Bar Date. These materials will include a copy of the Distribution Plan Notice and a Claim Form (together with instructions for completion of the Claim Form).

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

16. **“Determination Notice”** shall mean the Fund Administrator’s written reply to each Potential Investor who timely filed a Claim Form with the Fund Administrator, setting forth the Fund Administrator’s conclusions concerning such claim. All determinations made by the Fund Administrator in accordance with the Plan shall be final and not subject to appeal.

17. **“Distribution Payment”** shall mean the funds allocated to an Eligible Investor in accordance with the terms of the Plan. The *de minimis* threshold for a Distribution Payment is \$10.00; therefore, a Distribution Payment must equal or exceed \$10.00 in order for a distribution to be made to an Eligible Investor.

18. “**Distribution Plan Notice**” shall mean the notice given to Potential Investors of their potential right to participate in the distribution of the Fair Fund and their obligation to file a Claim Form in order to participate. The Fund Administrator, in consultation with the Commission staff, shall design the Distribution Plan Notice, consistent with the provisions of the Plan, and such notice shall include, at a minimum, a statement that the distribution relates to shares of Focus Media ADSs, the means of obtaining Claims Packets (including Claim Forms), instructions for submitting Claim Forms, and the Claims Bar Date. The Distribution Plan Notice will be both mailed and published according to the schedule detailed herein.

19. “**Eligible Investors**” means a Potential Investor who suffered a loss as a result of transactions in Eligible Securities during the Relevant Period and who is determined by the Fund Administrator to be eligible for a Distribution Payment from the Fair Fund. An Eligible Investor shall not include:

- (a) Any Respondent named in this action (or any of their Affiliates, assigns, heirs, distributes, spouses, parents, children, or controlled entities);
- (b) Any employee or former employee of Respondents or any of its past or present Affiliates who has been terminated for cause in connection with the violations alleged in the Order or any related Commission action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Order or any related Commission action;
- (c) Any defendant in any action brought by the Commission or any class action lawsuit related to the conduct in this action (or any of such defendant’s Affiliates, assigns, heirs, distributes, spouses, parents, children, or controlled entities) unless and until such defendant is found

not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Claim Form;

- (d) Any person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in this action or any related Commission action (or any of such defendant's Affiliates, assigns, heirs, distributees, spouses, parents, children, or controlled entities) unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Claim Form;
- (e) Any person who assigned their right to obtain a recovery in the Commission's action against Respondents; provided, however, that this provision shall not be construed to exclude those persons who obtained such a right by gift, inheritance, devise or operation of law; or
- (f) The Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as the Fund Administrator.

20. **"Eligible Loss Amount"** is the amount of loss an Eligible Investor incurred through the investment in Eligible Securities during the Relevant Period calculated in accordance with the Plan of Allocation. An Eligible Investor's Eligible Loss Amount will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Order in this case that was received from another source (*e.g.*, class action settlement), to the extent known by the Fund Administrator.

21. **"Eligible Securities"** shall mean shares of Focus Media ADS (ticker symbol FMCN) held as of the March 16, 2010 or purchased between that date and July 29, 2010.

22. **“Fund Administrator”** shall mean Analytics, the firm appointed by the Commission to administer the Fair Fund, collectively with all employees, consultants, or independent contractors of such firm.

23. **“Net Fair Fund”** shall mean Fair Fund, plus accumulated interest earnings thereon, less amounts expended for tax obligations and fees and costs of administering the Fair Fund in accordance with the Plan.

24. **“Persons”** shall mean an individual as well as a legal entity, such as a corporation, partnership, or limited liability company.

25. **“Plan of Allocation”** shall mean the methodology used to calculate an Eligible Loss Amount for an Eligible Investor as set forth in Exhibit 1.

26. **“Potential Investors”** shall mean those persons, or their lawful successors, identified by the Fund Administrator as having possible claims to recover from the Net Fair Fund under the Plan, or persons asserting that they have possible claims to recover from the Net Fair Fund under the Plan.

27. **“Relevant Period”** shall mean the holding of Eligible Securities as of March 16, 2010 or purchased between that date and July 29, 2010.

28. **“Summary Notice Publication”** shall mean the notice published on PRNewswire once a week for three consecutive weeks within five (5) days of the date of the mailing of Claims Packets to Potential Investors. 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 shares of Eligible Securities held during the Relevant Period, and the means of obtaining a Claims Packet.

29. **“Recognized Loss (or Gain) per Share”** shall mean the Potential Investor’s compensable loss or gain per share pursuant to the Plan of Allocation.

30. “**Tax Administrator**” shall mean Miller Kaplan, the tax administrator appointed by the Commission.

III. PLAN OF ALLOCATION

31. The Fair Fund will be distributed to Eligible Investors as provided under the terms of the Plan. An Eligible Investor’s Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Exhibit 1 to the Plan, will be used to determine the amount of their Distribution Payment.

32. Should the total of the Eligible Loss Amounts of all Eligible Investors exceed the Net Fair Fund, the Fund Administrator will distribute funds to the Eligible Investor based upon a *pro rata* distribution formula. An Eligible Investor’s *pro rata* share will be calculated as his, her, or its Eligible Loss Amount divided by the aggregate Eligible Loss Amounts of all Eligible Investors. No Distribution Payment will be made to an otherwise Eligible Investor unless the amount to be paid equals or exceeds \$10.00.

IV. ADMINISTRATION OF THE FAIR FUND

A. General Provisions

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

34. Any claim asserted by a Potential Investor shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence

that the Fund Administrator deems necessary or appropriate including but not limited to, available account statements and trade confirmations.

35. All claims must be verified on the basis of a signed Claim Form executed by the Potential Investor or his, her or its representative under the penalty of perjury under the laws of the United States.

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

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

38. The Fund Administrator is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided that such Institutions are not excluded pursuant to other provisions of the Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Fund Administrator under the Plan.

B. Claims Process

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

40. Within forty-five (45) days following the approval of the Plan, the Fund Administrator shall:
- (a) design a Claims Packet, which shall be submitted to Commission staff for review and approval;
 - (b) create a mailing and claims database, consisting of information in the trading records for Eligible Securities obtained by the Commission staff or information otherwise obtained by the Fund Administrator;
 - (c) run a National Change of Address search to retrieve updated addresses for all records in the database;
 - (d) mail by United States First Class Mail a Claims Packet to each Potential Investor known to the Fund Administrator;
 - (e) establish and maintain a website devoted solely for the administration of the Fair Fund, located at www.FocusMediaDistributionFund.com (the “Fair Fund’s Website”), which will contain the Plan approved by the Commission, the Claims Packet, and Claim Form, and means for each Potential Investor to request a Claims Packet by mail;
 - (f) establish a toll-free telephone number, 888-736-4380, by which Potential Investors can obtain information about the Fair Fund;
 - (g) establish and maintain a traditional mailing address and an email address (Claims@FocusMediaDistributionFund.com), which will be listed on all correspondence from the Fund Administrator;
 - (h) publish a copy of the Summary Notice Publication, approved by the Commission staff, and disseminate the Summary Notice Publication via

PRNewswire once a week for three consecutive weeks within five (5) days of the date of the mailing of Claim Packets to Potential Investors; and

- (i) deliver electronic copies of the Claim Form to electronic filers who regularly submit electronic claims on behalf of their clients.

41. The Fund Administrator will also send Claims Packets and cover letters to brokerages and other institutions that hold securities in “street name” as nominees for the benefit of their customers who are the beneficial owners of the securities. The Fund Administrator will require that these entities, to the extent that they were record holders for beneficial owners of the Eligible Securities:

- (a) Notify the respective beneficial owners within fourteen (14) days of receipt of the Fund Administrator’s notice so that beneficial owners may timely file a claim. The burden will be on the nominee holders to ensure the Claims Packets and other relevant materials are properly disseminated to their customers; and/or
- (b) provide the Fund Administrator a list of last known names and addresses for all beneficial owners for whom the record holders held Eligible Securities during the Relevant Period so that the Fund Administrator can communicate with them directly.

42. The Fund Administrator shall supply a Claims Packet to any Potential Investor who requests a copy via mail, phone or e-mail prior to the Claims Bar Date.

43. The Fund Administrator shall attempt to locate any Potential Investor whose Claims Packet has been returned by the United States Postal Service (“USPS”) as undeliverable.

The Fund Administrator shall immediately mail again any returned undelivered mail for which the USPS has provided a forwarding address.

44. The Fund Administrator may engage a third-party search firm (Experian) to conduct more rigorous searches for addresses of missing Potential Investors. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable, after consultation with the Commission staff.

C. Review of Claims Process

45. The Fund Administrator shall review each Claim Form received to determine the validity and amount of such Potential Investor's Eligible Loss Amount, together with any additional conclusions of the Fund Administrator on other issues relevant to the claim. Each Potential Investor shall have the burden of proof to establish the validity and amount of his, her or its claim. The Fund Administrator shall have the right to request, and the Potential Investor shall have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

46. To avoid being barred from asserting a claim, each Potential Investor must submit to the Fund Administrator a properly completed Claim Form reflecting such Potential Investor's claim, together with all supporting documentation on or before the Claims Bar Date. The Claims Bar Date may be extended for one or more Potential Investors by the Fund Administrator, in its sole discretion, in which event such extension shall constitute the Claims Bar Date for such Potential Investors. Unless otherwise determined by the Fund Administrator, in its sole discretion, for good cause shown, any Potential Investor who does not file a properly completed and documented Claim Form, including the Potential Investor's tax identification number, postmarked by (or received by the Fund Administrator if not sent by U.S. Mail) or before the

Claims Bar Date, shall be barred from asserting a claim against the Fund Administrator or the Fair Fund.

D. Notice of Deficient Claims, Opportunity to Cure, and Notification of Claims Determination

47. The Fund Administrator shall provide to each Potential Investor whose claim is deficient, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient. The Claim Deficiency Notice shall be provided to such affected investor within forty-five (45) days after the Claims Bar Date.

48. The Fund Administrator shall have the authority, in its sole discretion, on a case-by-case basis, to extend the Claims Bar Date and waive technical claim deficiencies and approve claims.

49. Any Potential Investor who has received a Claim Deficiency Notice shall have thirty (30) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

50. On or before the Claims Determination Date, the Fund Administrator shall mail by United States First Class Mail a Determination Notice to each Potential Investor who has filed a Claim Form with the Fund Administrator, setting forth the Fund Administrator's conclusions concerning such claim. In the event a claim is denied, in whole or in part, the Fund Administrator will state the reason for such denial.

51. All determinations made by the Fund Administrator in accordance with the Plan shall be final and not subject to appeal.

E. Provisions for Tax Administration

52. The Fair Fund is a Qualified Settlement Fund within the meaning Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator

of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) obtaining a taxpayer identification number;
- (b) timely requesting funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable tax returns; and
- (c) fulfilling any information reporting or withholding requirements required for distributions from the Net Fair Fund.

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

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

F. Procedures for Distribution of the Net Fair Fund

55. The Fund Administrator shall distribute the Net Fair Fund to all Eligible Investors only after all timely submitted Claim Forms have been processed and all Potential Investors whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

56. Within sixty (60) days following the Claims Determination Date, the Fund Administrator shall prepare a final payee list (“Payee List”) that includes the names of Eligible Investors and the Eligible Loss Amount of each Eligible Investor. In recommending a distributable amount, the Fund Administrator will retain a prudent reserve to pay any taxes, fees

and expenses payable in connection with the Fair Fund, as well as a reasonable contingency for potential unforeseen issues.

57. 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 Plan; (b) is accurate as to Eligible Investors’ names, addresses, and Eligible Loss Amount; and (c) provides all information necessary to make a payment equal to the amount of the applicable Eligible Loss Amount for such Eligible Investor.

58. Upon receipt of the Payee List and Reasonable Assurances Letter, the Commission staff will seek an order from the Commission to disburse the funds identified in the Payee List in accordance with the provisions of the Plan, pursuant to Rule 1101(b)(6) of the Rules, 17 C.F.R. § 201.1101(b)(6). Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the “Escrow Account.” The Fund Administrator shall then distribute the funds to Eligible Investors as provided for in the Plan.

59. Prior to 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”), that is acceptable to the Commission staff.

60. The Fund Administrator shall establish with the Bank an 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 as described above. The Fund Administrator shall also establish with the Bank a separate “Deposit Account” (*e.g.*, controlled distribution account, managed distribution account, linked checking account or investment account) for the purpose of funding distribution payments to be distributed to Eligible Investors by the Fund Administrator pursuant to the Plan. The name

of such account shall be in the following form: Focus Media Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *In the Matter of Focus Media Holding Limited, et al.*, Administrative Proceeding File No. 3-16852.

61. 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 Investors, 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.

62. 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.

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

64. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls (*e.g.*, check number and

check amount) before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks.

65. Following the Commission's issuance of an order to distribute the Fair Fund to Eligible Investors as provided for in the Plan, the Fund Administrator shall commence the distributions to all Eligible Investors as promptly as possible following the transfer of funds from the BFS to the Escrow Account at the Bank.

66. All Fair Fund checks issued to Eligible Investors by the Fund Administrator shall bear a stale date of one hundred twenty (120) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An Eligible Investor's claim shall be extinguished if he, she or it fails to negotiate his, her or its check by the stale date. All such funds will remain in the Net Fair Fund.

67. All Distribution Payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after one hundred twenty (120) days; and (d) the contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. Any such communication shall be submitted to the Commission staff and the Tax Administrator for review and approval. The Fair Fund distribution checks, on their face or the accompanying mailbag, shall clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

68. The Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the Secretary by delegated authority or an Administrative Law Judge; and/or any investor information provided by Commission staff and may not be held liable to any person other than the Commission or the Fair Fund for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission was caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of this Plan.

69. The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Investor shall not affect an Eligible Investor's rights and claims against any party.

G. Uncashed and Reissued Checks

70. The Fund Administrator shall reissue checks to Eligible Investors, upon the receipt of a valid, written request from the Eligible Investor. Such reissued checks will be void after sixty (60) days from the issuance and in no event will a check be reissued after one hundred twenty (120) days post-distribution.

71. The Fund Administrator will perform an advanced address search for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within one hundred twenty (120) days post-distribution. Furthermore, the Fund Administrator will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of Commission staff and will reissue such checks if necessary, within one hundred twenty (120) days post-distribution. However, the

Eligible Investor has the burden of providing the Fund Administrator with any changes to his, her or its mailing address.

H. Residual Funds

72. Approximately one year following initial distribution, after all taxes of the Net Fair Fund have been satisfied, if there are remaining funds from uncashed checks, tax refunds or otherwise, the Fund Administrator, in consultation with Commission staff, may distribute those residual funds to Eligible Investors, if any, who filed claims with the Fund Administrator after the Claims Bar Date or who were late in curing a rejected claim, with Commission approval pursuant to the Rules. These otherwise Eligible Investors will receive a Distribution Payment up to the Eligible Loss Amount that would have been received if their claim had been filed on time.

73. If any funds remain after the payment of claims that were filed late or cured after the Claims Bar Date, or if no such claims exist, the Fund Administrator, in consultation with Commission staff, may distribute the remaining residual funds on a *pro rata* basis to all Eligible Investors who cashed a check or received a wire and who would receive at least the distribution *de minimis* amount from such additional distribution, with Commission approval pursuant to the Rules.

74. If, after consultation between the Fund Administrator and Commission staff, any further distribution is not deemed cost effective, the remaining funds may be transmitted to the Commission for transfer to the Treasury after all reports and accountings have been completed, as provided below.

I. Post Distribution, Document Retention, and Wrap-Up

75. One hundred eighty (180) days following the final distribution, all approved final fees and expenses shall be paid, all outstanding checks shall be voided, and any remaining funds

shall be paid to the Commission for transfer to the Treasury upon receipt of written instructions by the Fund Administrator.

76. The Fund Administrator will preserve all documents, including documents in any media, for six (6) years after the transfer of any remaining funds to the Commission. In addition, the Fund Administrator will shut down the Fair Fund's Website six (6) months after the transfer of any remaining funds to the Commission.

77. No further claims shall be made against the Fair Fund beyond the amount allocated to Eligible Investors. Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever.

J. Filing of Reports and Accountings

78. Pursuant to Rule 1105(f) the Fund Administrator shall provide Commission staff with an accounting during the first ten (10) days of each calendar quarter on a standardized accounting form provided by the Commission staff. The accounting shall inform the Commission staff of all monies earned or received and all monies spent in connection with the administration of the Plan.

79. When the final distribution is completed, the Fund Administrator shall provide to Commission staff a final accounting for approval by the Commission summarizing all tasks undertaken and the outcome of its administrative efforts. The Fund Administrator shall make arrangement for the final payment of taxes and all other outstanding fees and expenses, and submit a final accounting of the Fair Fund in an SEC standard accounting format provided by the staff of the Commission. The final accounting shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the

administration of the Plan and shall be compiled in coordination with the Tax Administrator, and a request for approval of any unpaid taxes.

K. Termination of Fair Fund

80. 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 and expenses have been paid; and (c) all remaining funds have been paid to the Commission for transfer to the Treasury.

V. NOTICE AND COMMENT PERIOD

82. The Notice of the Proposed Plan of Distribution and Opportunity for Comment (“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 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 3-16852” in the subject line. Comments received will be available to the public. Persons should only submit comments that they wish to make publicly available.

Exhibit 1
Plan of Allocation

1. For shares of the Eligible Securities held as of March 16, 2010, and:
 - (a) sold between March 17, 2010 and July 29, 2010 (inclusive of both dates), the recognized loss per ADS is -\$1.14; or
 - (b) sold after July 29, 2010, the recognized loss per ADS is -\$0.43.
2. For shares of the Eligible Securities purchased between March 17, 2010 and July 29, 2010 (inclusive of both dates), and:
 - (a) sold on or before July 29, 2010, the recognized loss per ADS is \$0.00; or
 - (b) sold after July 29, 2010, the recognized gain per ADS is +\$0.71.
3. For shares of the Eligible Securities purchased after July 29, 2010, the recognized loss per ADS is \$0.00.
4. Specifically, for each investor who held shares of Eligible Securities as of the beginning of the Relevant Period or made multiple purchases and/or sales during the Relevant Period, the first-in, first-out (“FIFO”) method will be applied to such holdings, purchases, and sales. Under the FIFO method, sales of shares during the Relevant Period will be matched, in chronological order, first against shares held at the beginning of the Relevant Period. The remaining sales of shares during the Relevant Period will then be matched, in chronological order, against shares purchased during the Relevant Period. The date of acquisition or sale is the “trade” date as distinguished from the “settlement” date. Option contract will not be valued.
5. An investor’s Eligible Loss Amount shall be determined by summing the investor’s Recognized Loss (or Gain) per Share across all shares purchased during the Relevant Period. If the sum is negative, reflecting an overall loss, the investor will have an Eligible Loss Amount. If the sum is positive, reflecting an overall gain, the investor’s Eligible Loss Amount will be zero. An Eligible Investor will be eligible to receive a distribution not to exceed the Eligible Loss Amount.
6. In the event that an Eligible Investor has an opening short position in Eligible Securities, the earliest Relevant Period purchases or acquisitions shall be matched against such opening short position. The date of a “short sale” is deemed to be the date of sale of Eligible Securities. The date of covering a “short sale” is deemed to be the date of purchase or acquisition of the Eligible Securities. Any gains from short selling will offset losses on other transactions, while losses from short selling will not offset gains on other transactions.

7. If the sum of Eligible Loss Amounts across all Eligible Investors exceeds the Net Fair Fund, payments to Eligible Investor will reflect their *pro rata* share of the Net Fair Fund, where the *pro rata* share is the investor's Eligible Loss Amount divided by the sum of Eligible Loss Amounts across all Eligible Investors.