

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18171

In the Matter of

Jeremy A. Licht d/b/a
JL Capital Management,

Respondent.

PLAN OF DISTRIBUTION

I. Overview

1. *Purpose.* The Division of Enforcement (“Division”) has prepared this Plan of Distribution (the “Plan”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”), 17 C.F.R. § 201.1101. As described more specifically below, the Plan provides for the distribution of the disgorgement, prejudgment interest, and civil money penalty paid Jeremy A. Licht, d/b/a JL Capital Management (“Licht” or “Respondent”) in the above-captioned administrative proceedings.

2. *Structure of Plan.* The structure of this Plan is based on the non-transparent nature of the “cherry-picking” violation and the need to conduct a cost-effective in-house distribution given the small size of the fund. The Plan does not provide for a claims process or dispute resolution process because: (a) the “cherry-picking” scheme is by its nature a non-transparent fraud; (b) investors are not aware of the harm suffered nor do they have access to the trading data from the cherry-picking scheme; (c) investors do not have the information, some of which is nonpublic, to calculate the harm caused by the cherry-picking scheme; and (d) investors will only be aware of their harm/losses when they receive a distribution check based upon the harm calculations performed by the Commission staff as part of their investigation.

3. *Background.* On September 12, 2017, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”)¹ against Licht, a former California registered investment adviser.

¹ Exchange Act Rel. No. 81584 (Sept. 12, 2017).

In the Order, the Commission found that, from at least January 2011 to November 2015, Licht engaged in a fraudulent trade allocation scheme, or “cherry-picking” that harmed his advisory clients. Licht allocated a disproportionate number of favorable trades (*i.e.*, trades that had a positive first-day return) to his own account and allocated a disproportionate number of unfavorable trades (*i.e.*, trades that had a negative first-day return) to his clients’ accounts over which he had discretionary authority. He generally traded the same securities for his clients’ accounts and his personal accounts. Licht used two broker dealers as custodians for all accounts under his management at different times during the relevant period. From January 2011 to September 2012, Broker 1 was custodian for the accounts under Licht’s management. Broker 1 terminated the relationship with Licht in August 2012 (effective October 2012) because they suspected that Licht was improperly allocating trades on their trading platform. Licht then moved his business to Broker 2’s platform, where he continued the “cherry picking” scheme until Broker terminated its relationship with Licht in March 2016.

Licht executed this scheme by trading in an omnibus account and delaying allocation of those trades to a specific account until he had an opportunity to observe the security’s intraday performance. In many cases, when the price of a stock rose on the purchase date, Licht sold the security the same day, locking in a day-trading profit that he allocated to himself. By contrast, Licht disproportionately allocated purchases that were not profitable on the purchase date to clients. Licht often waited several hours and/or until after the close of the trading day to allocate trades from his omnibus account. Licht’s cherry-picking financially benefited him and disadvantaged his clients.

The Commission ordered Licht to pay disgorgement of \$88,504.00, prejudgment interest of \$8,714.34 and a civil penalty of \$181,071.00. In the Order, the Commission also created a fair fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalty paid, along with the disgorgement and prejudgment interest, can be distributed to harmed investors (the “Fair Fund”).

Licht paid the full total of \$278,289.34, pursuant to the Order. The Fair Fund is currently deposited in an interest-bearing account at the United States Department of the Treasury’s Bureau of Fiscal Service (“BFS”). All BFS fees and expenses will be paid by the Fair Fund. Other than potential interest income from the BFS investment, the Commission does not anticipate that the Fair Fund will receive any additional funds. If any additional funds are received, those funds will be sent to the U.S. Treasury and not be distributed.

This Plan provides for the distribution of the Fair Fund, less the Reserve, defined in paragraph 7 below (“Net Fair Fund”), to those Eligible Investors, as defined in paragraph 12 below. The Fund Administrator has determined that the total amount (including interest) that will be distributed to Eligible Investors who suffered harm will be \$101,791.46.

4. *Jurisdiction and Control.* The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is approved by the Commission, and the Commission retains jurisdiction over its implementation.

II. Administration of the Plan

5. *Fund Administrator.* Noel Gittens is the fund administrator for the Fair Fund (“Fund Administrator”). As a Commission employee, the Fund Administrator shall receive no compensation for his services in administering the Fair Fund, other than his regular salary as a Commission employee. In accordance with Rule 1105(c) of the Commission’s Rules,² no bond is required since the Fund Administrator is a Commission employee.

The Fund Administrator will, among other things: oversee the administration of the Fair Fund; obtain contact and mailing information for the Eligible Investors; distribute money from the assets of the Fair Fund to Eligible Investors in accordance with the Plan; resolve payment issues, prepare a final accounting; and provide the Tax Administrator with funds to pay tax liabilities and tax compliance fees and costs. The Fund Administrator will engage a third party to perform some of the administrative tasks associated with implementing the Plan (the “Third-Party”). The Fund Administrator may be removed at any time by order of the Commission or hearing officer.

6. *Tax Administrator.* Pursuant to the Omnibus Order Directing the Appointment of Tax Administrator in Administrative Proceedings that Establish Distribution Funds beginning June 30, 2017 through the 2018 calendar year,³ the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund.⁴ Further, the Fund Administrator will cooperate with the Tax Administrator for purposes of timely and accurately fulfilling the information reporting and withholding obligations of the Fair Fund in compliance with IRS regulations, including but not limited to the Foreign Account Tax Compliance Act (“FATCA”). The Tax Administrator shall prepare a description of the tax information reporting and other related tax matters, which shall be provided to the Fund Administrator for dissemination to Eligible Investors before or contemporaneously with their distribution payments. The Tax Administrator shall be compensated for all reasonable costs and expenses from the Fair Fund according to the terms of Tax Administrator’s Revised 2017-2018 Letter Agreement with the Commission, and tax obligations will be paid out of the Fair Fund.

7. *Reserve.* A reserve is established for (a) future taxes and the fees and expenses of the Tax Administrator in the amount of \$14,000.00, and (b) administrative expenses of the Third-Party engaged to assist the Fund Administrator in implementing the Plan in the amount of \$5,144.00 (the “Reserve”). The Reserve will be \$19,144.00. After the distribution is completed, any remaining amounts in the Reserve will become part of the Residual described in paragraph 20 below.

8. *Qualified Settlement Fund.* The Fair Fund constitutes 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.

² 17 C.F.R. § 201.1105(c).

³ Exchange Act Rel. No. 81057 (June 30, 2017).

⁴ Exchange Act Rel. No. 83068 (Apr. 19, 2018).

III. Plan Procedures

9. *No Claims and Dispute Resolution Process.* Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff reasonably concluded that it had all records necessary to identify investors and calculate harm, but such records were not available to investors. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making, approving and disputing claims are not applicable.

10. *Specification of Potentially Eligible Investors.* The Fair Fund shall be distributed to the harmed investors identified by Commission staff during its investigation of the underlying securities violations. An investor is deemed harmed only if that investor was determined, pursuant to the methodology described in paragraph 11, to have an account that sustained a loss from January 1, 2012 to March 31, 2016 (the “Investment Period”) due to the “cherry-picking” scheme, detailed in the Order. Based on its investigation, Commission staff identified ninety three (93) investor accounts that were potentially harmed (“Potentially Eligible Investors”).

11. *Methodology Used to Determine Distribution Amounts.* The Fund Administrator shall determine the amount to be distributed to each Potentially Eligible Investor by calculating the loss for each Potentially Eligible Investor account as the difference between the First-day Profit that the customer account actually earned over the Investment Period and the estimated non-scheme First-day Profit that the customer account would have earned without the preferential trade allocation scheme. First-day Profit on a security purchase is calculated as the number of shares purchased for the account multiplied by either (a) the sale price per share less the purchase price per share if the security was sold on the same day as the purchase, or (b) the closing price on the day the shares were purchased less the purchase price per share if the security was not sold on the same day. The total First-day Profit for an account is the sum of First-day Profits across all purchases in the account during the Investment Period. Distributable amounts shall be determined, in the following manner:

- a. Calculation of the first-day return weighted by purchase amount for all trading during the period January 2012 to September 2012 (“Trading Period 1”) for all customer accounts (favored and non-favored accounts) without the preferential trade allocation scheme, which is equal to -1.396% (“the non-scheme first-day return”) for Trading Period 1;
- b. Calculation of the first-day return weighted by purchase amount for all trading during the period October 2012 to March 2016 (“Trading Period 2”) for all customer accounts (favored and non-favored accounts) without the preferential trade allocation scheme, which is equal to -0.215% (“the non-scheme first-day return”) for Trading Period 2;
- c. Calculate the non-scheme First-day Profit that each customer account would have earned without preferential trade allocations as the dollar value of purchases in the customer account over the Investment Period times the non-scheme first-day returns of -1.396% and -0.215%, respectively for Trading Periods 1 and 2;

- d. Calculate the estimated loss or gain for each customer account, during Trading Periods 1 and 2, attributable to the preferential trade allocation scheme as the difference between the calculated non-scheme first-day loss or gain for the account and the total First-Day Profit for each customer account (“Net Harm”);
- e. Each account will be paid reasonable interest on its Net Harm, calculated using the short-term Applicable Federal Rate compounded quarterly from the midpoint of the trading period in which the harm occurred through August 31, 2019.
- f. The Distribution Payment for each account will be the Net Harm plus the reasonable interest amount.
- g. Accounts with a Net Harm of less than \$10.00 are excluded from the distribution.

Excluding all customer accounts with gains attributable to the preferential trade allocation scheme or which had a Net Harm less than \$10.00, the Net Harm applicable to customer accounts that were defrauded because of the preferential trade allocation scheme is \$34,089 for accounts during Trading Period 1 and \$61,547 during Trading Period 2. The total Net Harm plus interest for all customer accounts (during Trading Periods 1 and 2) is \$101,791.46.

The Net Fair Fund available for distribution is greater than the total Net Harm suffered by all Eligible Investors. Accordingly, each Eligible Investor will receive a distribution amount from the Net Fair Fund equal to the full amount of loss sustained plus interest (the “Distribution Payment”). The Distribution Payment amounts are set forth in Exhibit A.

In the view of the Commission staff and the Fund Administrator, this methodology constitutes a fair and reasonable allocation of the Fair Fund to compensate an investor’s harm. It is anticipated that there will be one distribution, which will take place as described herein.

12. *De Minimis Amount.* Potentially Eligible Investors with a Net Harm totaling less than \$10.00 (“*De Minimis* Amount”) will not be eligible for a Distribution Payment. The Fair Fund shall be distributed to the Potentially Eligible Investors whose Net Harm exceed the *De Minimis* Amount (“Eligible Investors”). After applying the *De Minimis* Amount, there are eighty-seven (87) Eligible Investors who will receive a distribution payment.

13. *Procedures for Locating and Notifying Certain Eligible Investors.* From information obtained by the Commission staff based on the review and analysis of applicable records from its investigation, the Fund Administrator has identified the Eligible Investors as defined in paragraph 12 above. The Fund Administrator will coordinate with the Tax Administrator to obtain information that is needed to accomplish the distribution in accordance with applicable tax requirements relating to the Fair Fund. To the extent possible, within sixty (60) days of the publication of the Plan for notice and comment, requests will be sent to certain Eligible Investors whose tax information is uncertain, to supply IRS Forms W-8 or W-9 tax information, and such other information needed to ensure an efficient and accurate delivery of

the full Distribution Payment (the “Request”). The Eligible Investor shall respond within thirty (30) days in order to receive a Distribution Payment.

14. *Undeliverable Mail.* If a Request and/or Distribution Payment is/are returned as undeliverable, best practicable efforts will be made to ascertain an Eligible Investor’s correct address. If another address is obtained, the Request and/or Distribution Payment will be resent to the Eligible Investor’s new address. Despite best practicable efforts, if an Eligible Investor’s correct address is not obtained, the Fund Administrator may remove such Eligible Investor from the distribution.

15. *Distribution Timing.* The Fund Administrator will use his best efforts to start the distribution within ninety (90) days of the Commission’s approval of the Plan.

16. *Distribution Payments.* The Fund Administrator will make arrangement for and oversee the transfer of funds to the Third-Party who is responsible for depositing the funds in an account at a commercial bank not unacceptable to the Fund Administrator in order to issue Distribution Payment checks. All Distribution Payment checks presented for payment or electronic transfer will be subject to “positive pay” controls before being honored by the bank, and all such checks issued shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this ninety (90) day period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. An investor’s claim to payment is extinguished as of the stale date and the funds will remain in the Fair Fund. A check reissue request should be made within ninety (90) days from the original check issuance date as instructed in the mailing with the check.

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 or her tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after ninety (90) days; and (d) the name of a person or entity to contact, if the Eligible Investor has 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 Payments, on their face, or the accompanying mailing 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 the Respondent’s conduct described in the Order.

17. *Disbursement of the Fair Fund.* Pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(6), the Fund Administrator will obtain an order from the Commission to disburse the Fair Fund. Pursuant to the order, the Commission’s Office of Financial Management (“OFM”) will transfer funds to the Third-Party for issuance of Distribution Payment checks.

18. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan. If there are any changes to the Plan that are determined to be material, Commission approval is

required prior to implementation by amending the Plan. Immaterial changes may be made by the Fund Administrator. For good cause shown, the Fund Administrator, in consultation with the Commission staff, may extend any of the procedural dates set forth in the Plan.

19. *Procedures for Investor Inquiries.* Eligible Investor inquiries will be limited to questions regarding the calculations of disbursement amounts. The Fund Administrator will investigate and respond to any inquiry within thirty (30) days of receipt of the inquiry. The Fund Administrator's resolution will be conclusive and final.

20. *Disposition of Undistributed Funds.* A residual account within the Fair Fund will be established for any amounts remaining after the disbursement to Eligible Investors from the Fair Fund. The residual account may include funds from the unused Reserve, distribution checks that have not been cashed, checks that were not delivered or returned to the Fund Administrator, and Fair Fund tax refunds for overpayment or for waiver of IRS penalties. All funds remaining in the residual account will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

21. *Accountings.* When all funds have been disbursed, except for the residual described in paragraph 20 above, the Fund Administrator will submit a final accounting pursuant to Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), for the approval of the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator. Since the funds are being held in a Commission designated account at the U.S. Treasury and the Fund Administrator is a Commission employee, no interim accountings will be made.

22. *Termination of the Fair Fund.* Following the completion of the distribution from the Net Fair Fund to Eligible Investors, the Fund Administrator will make arrangement for the final payment of taxes, Tax Administrator fees and expenses, and other administration expenses and will submit a final accounting to the Commission. The Fair Fund will be eligible for termination after all of the following have occurred: (a) a final accounting, appearing on the standard accounting form utilized by the Commission staff, has been submitted by the Fund Administrator, and has been approved by the Commission; and (b) all taxes, fees and expenses have been paid. Upon Commission approval of the final accounting, Commission staff will seek an order from the Commission to: (a) transfer the remaining residual amount, and any amounts returned to the Fair Fund in the future, to the U.S. Treasury; (b) terminate the Fair Fund; and (c) discharge the Fund Administrator.

**EXHIBIT A
DISTRIBUTION CHART**

Eligible Investor	Trading Period	Net Harm	Reasonable Interest	Distribution Amount
Eligible Investor # 1	1	\$14,151.39	\$940.08	\$15,091.47
Eligible Investor # 2	1	\$6,915.81	\$459.42	\$7,375.23
Eligible Investor # 3	1	\$6,604.66	\$438.75	\$7,043.41
Eligible Investor # 4	1	\$6,150.88	\$408.60	\$6,559.48
Eligible Investor # 5	1	\$4,586.02	\$304.65	\$4,890.67
Eligible Investor # 6	1	\$3,775.27	\$250.79	\$4,026.06
Eligible Investor # 7	1	\$3,054.05	\$202.88	\$3,256.93
Eligible Investor # 8	1	\$2,772.46	\$184.17	\$2,956.63
Eligible Investor # 9	1	\$2,205.99	\$146.54	\$2,352.53
Eligible Investor # 10	1	\$1,799.88	\$119.57	\$1,919.45
Eligible Investor # 11	1	\$1,760.83	\$116.97	\$1,877.80
Eligible Investor # 12	1	\$1,033.33	\$68.64	\$1,101.97
Eligible Investor # 13	1	\$735.06	\$48.83	\$783.89
Eligible Investor # 14	1	\$539.55	\$35.84	\$575.39
Eligible Investor # 15	1	\$498.22	\$33.10	\$531.32
Eligible Investor # 16	1	\$475.26	\$31.57	\$506.83
Eligible Investor # 17	1	\$388.35	\$25.80	\$414.15
Eligible Investor # 18	1	\$381.52	\$25.34	\$406.86
Eligible Investor # 19	1	\$268.65	\$17.85	\$286.50
Eligible Investor # 20	1	\$244.48	\$16.24	\$260.72
Eligible Investor # 21	1	\$227.68	\$15.12	\$242.80
Eligible Investor # 22	1	\$197.46	\$13.12	\$210.58
Eligible Investor # 23	1	\$172.03	\$11.43	\$183.46
Eligible Investor # 24	1	\$134.66	\$8.95	\$143.61
Eligible Investor # 25	1	\$129.02	\$8.57	\$137.59
Eligible Investor # 26	1	\$126.99	\$8.44	\$135.43
Eligible Investor # 27	1	\$125.55	\$8.34	\$133.89
Eligible Investor # 28	1	\$119.25	\$7.92	\$127.17
Eligible Investor # 29	1	\$117.01	\$7.77	\$124.78
Eligible Investor # 30	1	\$116.43	\$7.73	\$124.16
Eligible Investor # 31	1	\$113.78	\$7.56	\$121.34
Eligible Investor # 32	1	\$103.55	\$6.88	\$110.43

Eligible Investor	Trading Period	Net Harm	Reasonable Interest	Distribution Amount
Eligible Investor # 33	1	\$98.33	\$6.53	\$104.86
Eligible Investor # 34	1	\$92.99	\$6.18	\$99.17
Eligible Investor # 35	1	\$88.92	\$5.91	\$94.83
Eligible Investor # 36	1	\$86.31	\$5.73	\$92.04
Eligible Investor # 37	1	\$84.37	\$5.60	\$89.97
Eligible Investor # 38	1	\$75.48	\$5.01	\$80.49
Eligible Investor # 39	1	\$73.17	\$4.86	\$78.03
Eligible Investor # 40	1	\$71.43	\$4.75	\$76.18
Eligible Investor # 41	1	\$66.85	\$4.44	\$71.29
Eligible Investor # 42	1	\$61.76	\$4.10	\$65.86
Eligible Investor # 43	1	\$51.13	\$3.40	\$54.53
Eligible Investor # 44	1	\$47.86	\$3.18	\$51.04
Eligible Investor # 45	1	\$45.02	\$2.99	\$48.01
Eligible Investor # 46	1	\$43.73	\$2.91	\$46.64
Eligible Investor # 47	1	\$40.11	\$2.66	\$42.77
Eligible Investor # 48	1	\$37.75	\$2.51	\$40.26
Eligible Investor # 49	1	\$35.91	\$2.39	\$38.30
Eligible Investor # 50	1	\$33.56	\$2.23	\$35.79
Eligible Investor # 51	1	\$32.49	\$2.16	\$34.65
Eligible Investor # 52	1	\$30.77	\$2.04	\$32.81
Eligible Investor # 53	1	\$27.63	\$1.84	\$29.47
Eligible Investor # 54	1	\$27.29	\$1.81	\$29.10
Eligible Investor # 55	1	\$26.60	\$1.77	\$28.37
Eligible Investor # 56	1	\$24.98	\$1.66	\$26.64
Eligible Investor # 57	1	\$24.97	\$1.66	\$26.63
Eligible Investor # 58	1	\$21.99	\$1.46	\$23.45
Eligible Investor # 59	1	\$21.16	\$1.41	\$22.57
Eligible Investor # 60	1	\$20.97	\$1.39	\$22.36
Eligible Investor # 61	1	\$19.73	\$1.31	\$21.04
Eligible Investor # 62	1	\$18.67	\$1.24	\$19.91
Eligible Investor # 63	1	\$17.14	\$1.14	\$18.28
Eligible Investor # 64	1	\$15.42	\$1.02	\$16.44
Eligible Investor # 65	1	\$12.58	\$0.84	\$13.42
Eligible Investor # 66	1	\$12.11	\$0.80	\$12.91
Eligible Investor # 67	1	\$11.69	\$0.78	\$12.47

Eligible Investor	Trading Period	Net Harm	Reasonable Interest	Distribution Amount
Eligible Investor # 68	1	\$10.52	\$0.70	\$11.22
Eligible Investor # 69	1	\$10.40	\$0.69	\$11.09
Eligible Investor # 70	2	\$6,437.13	\$390.28	\$6,827.41
Eligible Investor # 71	2	\$5,946.69	\$360.55	\$6,307.24
Eligible Investor # 72	2	\$3,842.06	\$232.94	\$4,075.00
Eligible Investor # 73	2	\$2,555.20	\$154.92	\$2,710.12
Eligible Investor # 74	2	\$2,428.91	\$147.26	\$2,576.17
Eligible Investor # 75	2	\$2,392.44	\$145.05	\$2,537.49
Eligible Investor # 76	2	\$2,286.32	\$138.62	\$2,424.94
Eligible Investor # 77	2	\$1,823.70	\$110.57	\$1,934.27
Eligible Investor # 78	2	\$1,619.43	\$98.19	\$1,717.62
Eligible Investor # 79	2	\$1,420.43	\$86.12	\$1,506.55
Eligible Investor # 80	2	\$1,192.56	\$72.30	\$1,264.86
Eligible Investor # 81	2	\$1,022.70	\$62.01	\$1,084.71
Eligible Investor # 82	2	\$465.25	\$28.21	\$493.46
Eligible Investor # 83	2	\$191.86	\$11.63	\$203.49
Eligible Investor # 84	2	\$191.86	\$11.63	\$203.49
Eligible Investor # 85	2	\$168.72	\$10.23	\$178.95
Eligible Investor # 86	2	\$66.18	\$4.01	\$70.19
Eligible Investor # 87	2	\$37.76	\$2.29	\$40.05
Totals		\$95,636.09	\$6,155.37	\$101,791.46