

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16786

In the Matter of

BANKRATE, INC.

Respondent.

ADMINISTRATIVE PROCEEDING
File No. 3-16787

In the Matter of

HYUNJIN LERNER, CPA.

Respondent.

PROPOSED PLAN OF DISTRIBUTION

A. Introduction

1. The Division of Enforcement has prepared this Proposed 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 proposes for the distribution of the funds collected from Bankrate, Inc. (“Bankrate”) and Hyunjin Lerner, CPA (“Lerner”) in the above-referenced matters, as well as funds received in a related district court proceeding.

2. On September 8, 2015, in two related settled administrative proceedings the

Commission issued separate orders (collectively, the “Orders”), against Bankrate¹ and Lerner² (collectively, the “Respondents”) finding that they violated the federal securities laws. The Commission’s Orders arose out of substantially similar facts and occurred within a subset of the time period as the violations alleged in a related class action (the “Class Action”).³ In the Orders, the Commission found that, during the second quarter of 2012, Bankrate, through its chief financial officer, Edward DiMaria (“DiMaria”), vice president and director of accounting, Matthew Gamsey (“Gamsey”), and vice president of finance, Lerner, intentionally manipulated its financial results to meet and/or exceed analyst consensus estimates for key financial metrics. As a result of the manipulation, Bankrate materially overstated its financial results for the second quarter of 2012.

3. The Commission ordered Bankrate to pay a \$15,000,000 civil penalty and ordered Lerner to pay a \$150,000 civil penalty, \$30,045 in disgorgement, and \$2,571 in prejudgment interest. Bankrate and Lerner paid the funds in full to the Commission on September 10, 2015 and September 18, 2015, respectively. On May 8, 2017, a single fair fund (the “Fair Fund”) was established, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, which combined the \$15,182,616 in civil penalties, disgorgement, and prejudgment interest paid by Bankrate and Lerner for distribution to harmed investors.⁴

4. In a related district court action (the “District Court Action”),⁵ pursuant to their

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 Cease-and-Desist Order and Civil Penalty, Securities Act Rel. No. 9901 (Sept. 8, 2015), (Admin. Proc. File No. 3-16786).

² See Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, Securities Act Rel. No. 9902 (Sept. 8, 2015), (Admin. Proc. File No. 3-16787).

³ *The City of Los Angeles, et al. v. Bankrate, Inc., et al.*, 9:14-cv-81323-DMM (S.D. Fla.).

⁴ See Order Establishing a Fair Fund, Exchange Act Rel. No. 80626 (May 8, 2017).

⁵ *SEC v. DiMaria, et al.*, 15-cv-07035 (S.D.N.Y. Sept. 8, 2015).

respective judgments, DiMaria paid \$231,158.56 in disgorgement, prejudgment interest, and civil penalties and Gamsey paid a \$60,000 civil penalty to the Commission, which was transferred into the Fair Fund for distribution with the funds therein.

5. In total, \$15,473,774.56 was paid into the Fair Fund. The Fair Fund is subject to the continuing jurisdiction and control of the Commission and the Fair Fund is currently on deposit in a Commission designated interest-bearing account at the United States Department of Treasury (“U.S. Treasury”) Bureau of Fiscal Service (“BFS”). 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 added to the Fair Fund for distribution to harmed investors, or be sent to the U.S. Treasury and not distributed, at the discretion of the Fund Administrator (defined below). All BFS fees will be paid by the Fair Fund.

6. On May 26, 2016, the Commission issued an order appointing Damasco & Associates LLP, now known as Miller Kaplan Arase LLP (“Miller Kaplan”), as the tax administrator (the “Tax Administrator”) of the Fair Fund.⁶

7. On January 18, 2018, the Commission issued an order appointing JND Legal Administration (“JND”) as the fund administrator (the “Fund Administrator”) of the Fair Fund.⁷ Pursuant to the order, JND obtained a bond in accordance with Rule 1105(c) of the Commission’s Rules, 17 C.F.R. § 201.1105(c), in the amount of \$15,182,616. The amount of the bond premium will be paid from the Fair Fund.

8. All reasonable administrative costs and expenses of the distribution, including the

⁶ See Order Appointing Tax Administrator, Exchange Act Rel. No. 77924 (May 26, 2016). See also Notice of Name Change of Appointed Tax Administrator, Exchange Act Rel. No. 81064 (June 30, 2017).

⁷ See Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 82535 (Jan. 18, 2018).

fees and expenses of the Fund Administrator and Tax Administrator will be paid from the Fair Fund. The Fund Administrator will submit invoices to Commission staff for approval by the Commission, pursuant to the Commission's Rules.

9. The Plan sets forth the methodology and procedures for distributing the Net Available Fair Fund, as defined below. The allocation methodology is substantially similar to the court-approved methodology developed for the Class Action. The Fund Administrator and Commission staff have concluded that distributing funds pursuant to the Plan, including but not limited to its Eligible Loss Amount calculation and *pro-rata* distribution formula, is a fair and reasonable way to compensate investors injured as a result of the Respondents' conduct.

10. The Plan contains notice and comment procedures set forth in paragraph 91 below. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

B. Definitions

As used herein, the definitions below shall apply. The timeline as set forth in Exhibit A attached hereto illustrates the key dates associated with the distribution process.

11. "Claimant" shall mean anyone who files a claim, including all Class Action Authorized Claimants, Class Action Deficient Claimants and Potentially Eligible Claimants.

12. "Claim Deficiency Notice" shall mean the notice sent by the Fund Administrator to a Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation). This notice shall advise the Claimant of the reason(s) for the deficiency and give an opportunity to cure such deficiency. The Claim Deficiency Notice shall be sent within 60 days after the Claims Bar Date (195 days after Plan approval). Subject to certain extensions provided for in the Plan, the deadline to cure deficiencies shall be 30 days

from the date of the Claim Deficiency Notice (225 days after Plan approval).

13. “Claims Bar Date” shall mean the filing deadline date established in accordance with the Plan by which a Proof of Claim Form must be received by the Fund Administrator to avoid the barring of any right of a Claimant to participate in the distribution of the Fair Fund. The Claims Bar Date shall be 90 days after the Fund Administrator’s mailing of the Notices (135 days after Plan approval). Proof of Claim Forms received after the Claims Bar Date will *not* be reviewed and evaluated, unless Commission staff so directs the Fund Administrator.

14. “Claims Determination Date” shall mean the date on which the Fund Administrator shall mail Determination Notices to each Claimant who has filed a Proof of Claim Form. Claims Determination Date is 150 days after mailing the Claim Deficiency Notices (345 days after Plan approval).

15. “Class Action” shall mean *The City of Los Angeles, et al., v. Bankrate, Inc. et al.*, Case No. 9:14-cv-81323-DMM (S.D. Fla.).

16. “Class Action Authorized Claimants” shall mean persons or entities who filed approved claims in the Class Action. Such persons or entities are automatically deemed Eligible Claimants with respect only to those transactions as to which a claim was previously authorized in the Class Action and are not required to submit a Proof of Claim Form pursuant to the Plan, unless they wish to amend their claim approved in the Class Action to include additional transactions.

17. “Class Action Authorized Claimants Notice” shall mean the notice that is sent to Class Action Authorized Claimants. This notice shall inform Class Action Authorized Claimants that they will automatically be deemed an Eligible Claimant under the Plan, with respect to the transactions in the Class Action for which their claim was previously approved, so long as their

approved transactions calculate to an Eligible Loss Amount equal to or exceeding the Distribution De Minimis Amount. JND will subtract the amount of the Class Action payment received (13%) from the Eligible Claimant's total Out of Pocket Loss, netting them a potential Fair Fund payment of up to 87% of their total Out of Pocket Loss. This notice shall also inform Class Action Authorized Claimants that should they wish to amend the claim approved in connection with the Class Action to include additional transactions, they may do so by submitting a revised Proof of Claim Form, along with documentation supporting the additional transactions; all such amendments will be reviewed for eligibility in accordance with the Plan. The Class Action Authorized Claimants Notice shall be mailed within 45 days of the approval of the Plan.

18. "Class Action Deficient Claimants" shall mean persons or entities who filed claims in the Class Action whose claims were determined to be deficient and who failed to cure such deficiencies in the Class Action.

19. "Class Action Deficient Claimants Notice" shall mean the notice that is sent to Class Action Deficient Claimants. This notice shall inform Class Action Deficient Claimants that they have an opportunity to cure the deficiencies in their Class Action claim by providing the required information and/or documentation. If receipt of such information and/or documentation cures their claim, Class Action Deficient Claimants will be deemed Eligible Claimants under the Plan, so long as their Eligible Loss Amount equals or exceeds the Distribution De Minimis Amount. The Class Action Deficient Claimants Notice shall be mailed within 45 days of the approval of the Plan.

20. "Days" shall mean calendar days, unless specified otherwise.

21. "Determination Notice" shall mean the notice, mailed by the Fund Administrator

by United States First Class Mail, to each Claimant who has filed a Proof of Claim Form setting forth the Fund Administrator's conclusion concerning the eligibility of such claim. In the event a claim is denied, in whole or in part, the Determination Notice will state the reason(s) for such denial and notify the Claimant of their opportunity to request reconsideration of their claim. Determination Notices shall be mailed within 150 days after mailing the Claim Deficiency Notices (345 days after Plan approval).

22. "Distribution De Minimis Amount" is \$10.00. No Eligible Claimant shall receive a distribution payment unless his, her or its Eligible Loss Amount calculated pursuant to the Plan of Allocation results in a payment that is equal to or greater than \$10.00.

23. "Eligible Claimants" shall mean persons (other than Excluded Parties) who purchased, acquired, or were gifted as compensation Eligible Securities during the Relevant Period, including all Class Action Authorized Claimants, who have an Eligible Loss Amount equal to or greater than the Distribution De Minimis Amount.

24. "Eligible Loss Amount" is the total amount of loss an Eligible Claimant incurred through the investment in Eligible Securities during the Relevant Period calculated in accordance with the Plan of Allocation.

25. "Eligible Securities" shall mean Bankrate common stock.

26. "Excluded Parties" shall mean (a) Respondents; (b) members of the immediate family (spouse or children) of any Respondent; (c) any person who was an officer or director of Bankrate during the Relevant Period; (d) any firm, trust, corporation, officer, or other entity in which any Respondent has or had a controlling interest; and (e) Bankrate's directors' and officers' liability insurance carriers, and any affiliates or subsidiaries thereof. The Proof of Claim Form will require Claimants to certify that that they are not an Excluded Party.

27. “Fair Fund” shall refer to the fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for the benefit of investors harmed by the Respondents’ securities violations discussed in the Orders.

28. “Net Available Fair Fund” shall mean the Fair Fund, plus accumulated interest and earnings from investments thereon, less taxes and the fees and expenses of administering the Plan.

29. “Notice” shall mean the Class Action Authorized Claimants Notice, the Class Action Deficient Claimants Notice, or the Potentially Eligible Claimants Notice (collectively, “Notices”).

30. “Payee List” shall mean a list of Eligible Claimants, each Eligible Claimant’s Eligible Loss Amount, distribution payment and relevant contact information.

31. “Plan of Allocation” shall be the methodology used to calculate an Eligible Loss Amount for an Eligible Claimant. The Plan of Allocation is substantially similar to the plan of allocation in the Class Action.

32. “Potentially Eligible Claimants” shall mean those persons or entities whose names and addresses are in JND’s Class Action database, but who never filed a claim in the Class Action and any other persons asserting that they have a possible eligible claim to recover from the Fair Fund.

33. “Potentially Eligible Claimants Notice” shall mean the notice mailed to Potentially Eligible Claimants. This notice shall inform Potentially Eligible Claimants that they must submit a Proof of Claim Form and supporting documentation in order to participate in the distribution of the Fair Fund. The Potentially Eligible Claimants Notice shall be mailed within 45 days of the approval of the Plan.

34. “*Pro Rata Share*” is a computation intended to measure Eligible Claimants’ Eligible Loss Amounts against one another. Should the total Eligible Loss Amount of all Eligible Claimants exceed the Net Available Fair Fund, the Fund Administrator will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Fund Administrator shall determine each Eligible Claimant’s *Pro Rata Share* of the Fair Fund based upon each Eligible Claimant’s Eligible Loss Amount divided by the total of all Eligible Loss Amounts of all Eligible Claimants, multiplied by the total amount in the Net Available Fair Fund.

35. “Proof of Claim Form” shall mean the form designed by the Fund Administrator in accordance with the terms of the Plan for the filing of a claim, and approved by Commission staff, which form shall require, at a minimum, sufficient documentation of all claimed transactions. Proof of Claim Forms will be available on the website established in connection with the Fair Fund. Claimants may also request a Proof of Claim Form from the Fund Administrator via mail, email or by calling the toll-free telephone helpline established for the Fair Fund.

36. “Purchase Price” shall mean the investor’s cost basis for calculating gain or loss, excluding all taxes, commissions and fees.

37. “Recognized Loss (or Gain) per Share” shall be the Eligible Claimant’s compensable allocation amount per share of Eligible Securities as calculated pursuant to the Plan of Allocation.

38. “Relevant Period” shall mean from August 1, 2012 through October 9, 2014, inclusive, including investors who purchased shares in the March 2014 secondary offering of Bankrate common stock.

39. “Summary Notice” shall mean the notice published on an Internet based-

newswire service with national distribution once a week for three consecutive weeks beginning within 5 days of the date of the mailing of the Notices. 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 Bankrate common stock and the means of obtaining a Proof of Claim Form and a Potentially Eligible Claimant Notice.

C. Administration of the Claims Procedures

General Administration Provisions

40. The Fund Administrator shall oversee the administration of the claims, procedures, and distribution as provided in this Plan. The Fund Administrator shall review all submitted claims and supporting documentation and make determinations under the criteria established herein as to the eligibility of Claimants to recover monies and the amount of money to be distributed from the Net Available Fair Fund to Eligible Claimants.

41. Any claim asserted by a Class Action Deficient Claimant, a Potentially Eligible Claimant, or a Class Action Authorized Claimant wishing to amend the claim approved in the Class Action 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, if available, account statements and trade confirmations.

42. The receipt of Eligible Securities during the Relevant Period by gift, transfer, inheritance, devise, or operation of law shall not otherwise be eligible to file a Proof of Claim Form with respect to such securities, and shall not be deemed the assignee of any claim relating to the purchase of such securities unless specifically so provided in the instrument of gift or assignment. However, the recipient of Eligible Securities as a gift, transfer, inheritance, devise or

operation of law shall be eligible to file a Proof of Claim Form and participate in the distribution of the Fair Fund to the extent the particular donor or decedent as the actual purchaser of Eligible Securities would have been eligible under the terms of the Plan. However, the donee and the donor may not both make a claim with regard to the same Eligible Securities. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored, assuming it is supported by proper documentation.

43. Regarding claims 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 for which such claims are properly made by the custodian or fiduciary of the retirement plan and not by the retirement plan's participants, the Fund Administrator shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of retirement plan participants and the number of shares owned by each retirement plan participant, if that information is known to the Fund Administrator or provided to the Fund Administrator. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner consistent with its fiduciary duties and the governing account or retirement plan provisions. With respect to any retirement plan that has been closed prior to the Fund Administrator's identification of Eligible Claimants, the Fund Administrator shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Fund Administrator prior to the Claims Bar Date.

44. The Fund Administrator is authorized to enter into agreement 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.

45. 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.

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

The Notice Process

47. Within 45 days following the entry by the Commission of its order approving the Plan, the Fund Administrator shall:

- a. design each of the Notices, which shall be submitted to Commission staff for review and approval;
- b. create a mailing and claims database of all Class Action Authorized Claimants, Class Action Deficient Claimants, and Potentially Eligible Claimants based on the Fund Administrator's records from the Class Action;
- 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 Notice and email, if available, as applicable, to each Class Action Authorized Claimant, Class Action

Deficient Claimant, and Potentially Eligible Claimant known to the Fund Administrator;

- e. establish and maintain a specific website devoted solely to the Fair Fund (the “Fair Fund’s Website”), which will contain the Plan approved by the Commission, the Notices, the Proof of Claim Form and other relevant documents;
- f. the Fund Administrator will also establish a link to the Fair Fund’s Website from its own website;
- g. provide a copy of the approved Plan and Notices to Commission staff for posting to its website and request that the Commission establish a link to the Fair Fund’s Website;
- h. establish and maintain a traditional mailing address and an email address, which will be listed on all correspondence from the Fund Administrator;
- i. establish a toll-free telephone number by which Claimants can obtain information about the Fair Fund;
- j. publish a copy of the Summary Notice, approved by the Commission staff, and disseminate the Summary Notice via an Internet based-newswire service with national distribution, once a week for three consecutive weeks beginning within 5 days of the date of the mailing of the Notices; and
- k. deliver electronic copies of the Proof of Claim Form and a Potentially Eligible Claimant Notice to electronic filers who regularly submit electronic claims on behalf of their clients.

48. The Fund Administrator will also send a Proof of Claim Form and a Potentially

Eligible Claimant Notice 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 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 Proof of Claim Form and Potentially Eligible Claimant Notice 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.

49. On an on-going basis, after the first Notices are mailed but before the Claims Bar Date, the Fund Administrator shall continue to supply the Notices and Proof of Claim Forms to persons who contact the Fund Administrator requesting a copy via mail, phone, or email.

50. The Fund Administrator shall attempt to locate anyone whose Notice has been returned by the United States 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.

51. All Claimants have the burden of providing the Fund Administrator with any changes to his, her, or its name or mailing address.

52. The Fund Administrator, with Commission staff approval, may engage a third-

party search firm to conduct more rigorous searches for persons whose Notice is returned as undeliverable. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable after consultation with the Commission staff.

53. Unless extended by the Commission, the Claims Bar Date shall be no more than 90 days from the date of mailing of Notices.

54. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Class Action Authorized Claimant who chooses to amend their Class Action approved claim must submit a Proof of Claim Form with the documentation to the Fund Administrator supporting their amended claim. Further, any Class Action Deficient Claimant must submit to the Fund Administrator all required supporting documentation to cure their deficient Class Action claim, and any Potentially Eligible Claimant who did not file a claim in the Class Action must submit to the Fund Administrator a properly completed Proof of Claim Form together with all required supporting documentation. The Fund Administrator may extend the Claims Bar Date for any Claimant, for good cause shown, with approval by Commission staff, in which event such extension shall constitute the Claims Bar Date for such Claimant. Such decisions of the Fund Administrator and Commission staff are final and not subject to challenge. The burden shall be upon each Claimant to ensure that his, her, or its Proof of Claim Form has been timely received by the Fund Administrator.

Review of Claims and Notification

55. The Fund Administrator shall review each Proof of Claim Form received to determine the validity and amount of such claim, together with any additional conclusions of the Fund Administrator on other issues relevant to the claim. Each Claimant, other than Class Action

Authorized Claimants who do not amend their claims, shall have the burden of proof to establish the validity and amount of his, her or its claim, and that he, she or it qualifies as an Eligible Claimant; and the Fund Administrator shall have the right to request, and the Claimant shall have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

56. The Fund Administrator shall provide a Claim Deficiency Notice to each Claimant who files a Proof of Claim Form that is deficient, in whole or in part, within 60 days of the Claims Bar Date. The Claim Deficiency Notice will set forth the reason(s) why the claim is deficient and instructions on how to cure the deficiency.

57. Any Claimant who has received a Claim Deficiency Notice shall have 30 days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

58. Any Claimant, other than Class Action Authorized Claimants who do not amend their claims, who has failed to file an appropriate Proof of Claim Form in a timely manner, or who has failed to timely cure a deficiency identified in a Claim Deficiency Notice, is not permitted to object to the barring or denial of his, her or its claim on the basis that:

- a. the Fund Administrator failed to mail, or to properly mail, or that such Claimant failed to receive, a copy of the Notice, Proof of Claim Form, Claim Deficiency Notice, or the relevant Determination Notice;
- b. the Fund Administrator failed to record properly the receipt of an initial Proof of Claim Form, or a revised Proof of Claim Form to cure deficiencies, or the requisite supporting documentation; or
- c. a Claimant's name and/or proper contact information was not properly

recorded in the Fund Administrator's records.

59. On or before the Claims Determination Date, the Fund Administrator shall mail by United States First Class Mail a Determination Notice to each Claimant who has filed a Proof of Claim Form with the Fund Administrator, setting forth the Fund Administrator's conclusion concerning such claim. The Fund Administrator will consult with the Commission staff regarding claim rejections before the issuance of Determination Notices. In the event a claim is denied, in whole or in part, the Fund Administrator will state the reason for such denial. Any Claimant seeking reconsideration of a denial of a claim must send a request for reconsideration ("Request for Reconsideration") to the Fund Administrator in writing within 30 days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Claimant is requesting reconsideration of their claim. Any request for reconsideration postmarked or, if not sent by U.S. Mail, received more than 30 days after the date of the Determination Notice will not be accepted.

60. The Fund Administrator may, in its sole discretion, consider disputes of any nature presented by Claimants, and will consult Commission staff as appropriate. The Determination Notice will constitute the Fund Administrator's final ruling regarding the status of the claim, unless the Potential Claimant is notified in writing that the determination has been revised in response to the Request for Reconsideration. Any such notice of reconsideration shall be sent by the Fund Administrator within 60 days of the date of the Determination Notice.

Plan of Allocation

61. The Net Available Fair Fund will be allocated among the Eligible Claimants based on the methodology, as set forth in the Plan of Allocation, attached as Exhibit B.

62. After the preliminary calculations have been made, any Eligible Claimant whose

preliminary calculation amount is less than the Distribution De Minimis Amount will be removed from the pool of Eligible Claimants.

63. Final calculations will then be made for all remaining Eligible Claimants on a *Pro Rata* Share basis to arrive at their distribution payment.

Provisions for Tax Administration

64. The Fair Fund is a Qualified Settlement Fund within the meaning of Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such 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 payment of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- c. fulfilling any information reporting or withholding requirements required for distributions from the Net Available Fair Fund.

65. The Fund Administrator shall cooperate with the Tax Administrator in providing any information necessary to ensure tax compliance with IRS regulations, including but not limited to the Foreign Tax Compliance Act (FATCA).

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

Procedures for Distribution of the Net Available Fair Fund

67. The Fund Administrator shall distribute the Net Available Fair Fund to all Eligible Claimants only after all timely submitted Proof of Claim Forms have been processed and all Claimants 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. The sum of claims paid to an Eligible Claimant from the Class Action and from the Fair Fund shall not exceed the Eligible Claimant's total losses. The Fund Administrator shall adjust the distribution amount from the Fair Fund in order to avoid payment of a windfall by subtracting the Class Action payment from the Eligible Claimant's Out of Pocket Loss.

68. Within 330 days following the Claims Bar Date, the Fund Administrator shall prepare a Payee List. The Payee List will include the names, addresses, Eligible Loss Amount and Distribution Payment of Eligible Claimants.

69. 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 Claimants' 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 Claimant.

70. 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 Commission's 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 Claimants as provided for in the

Plan.

71. Prior to disbursement of the Net Available 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.

72. 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 Claimants by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: Bankrate Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan In the Matter of Bankrate, Inc., Administrative Proceeding File No. 3-16786.

73. 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. 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.

74. 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.

75. 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.

76. All payments to Eligible Claimants 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 90 days; and (d) contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. Any such informational letter or other mailing to recipients characterizing their distributions shall be submitted to the Commission staff for review and approval. Checks, on their face, or in the accompanying mailing will 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.

77. 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.

78. The submission of a Proof of 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.

79. All checks will bear a stale date of 90 days from the date of issuance. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. 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 funds will remain in the Net Available Fair Fund. If a check reissue has been requested before the stale date, such request is governed by the following section.

Uncashed Checks and Reissues

80. 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, and will reissue checks to Eligible Claimants who are located to the extent a new address is identified. Such reissued checks will be void at the later of 90 days from the issuance of the original check or 30 days from the reissuance, and in no event will a check be reissued after 90 days from the date of the original issuance without approval from the Commission staff. Where new address information is not available after a diligent search (and in no event later than 90 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.

81. The Fund Administrator shall reissue checks to Eligible Claimants upon the receipt of a valid written request from an Eligible Claimant. In cases where an Eligible Claimant is unable to endorse a check as written (*e.g.*, name change as a result of marriage, divorce or death), and the Eligible Claimant or its lawful representative requests the reissuance of a check under a different name, the Fund Administrator will request, and must receive, documentation supporting the 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 to the requesting party. Such reissued checks will be void at the later of 90 days from the issuance of the original check or 30 days from the reissuance, and in no event will a check be reissued after 90 days from the date of the original issuance without the approval of Commission staff.

82. In addition, the Fund Administrator will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed checks over \$100.00 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

Residual Funds

83. Approximately one year following initial distribution, after all taxes of the Net Available 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 Claimants, 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 Commission's Rules. These otherwise Eligible Claimants will receive a distribution payment up to the Eligible Loss Amount that would have been received if their claim had been filed on time.

84. 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 Claimants 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 Commission's Rules.

85. 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 United States Treasury after all reports and accountings have been completed, as provided below.

Filing of Reports and Accountings

86. The Fund Administrator shall provide to the Commission staff a progress report and a quarterly account statement in a format to be provided by Commission staff, within 45 days of the Commission's approval of the Plan, and shall provide to Commission staff additional reports and quarterly account statements within 10 days after the end of every calendar quarter. Such progress reports shall inform the Commission staff of the activities and status of the Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Fair Fund, including among other things, an interim accounting of all monies in the Fair Fund.

87. When the final distribution is completed, the Fund Administrator shall provide to

Commission staff a final report 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 all monies received, earned, spent, and distributed in connection with the administration of the Plan in a format provided by the Commission staff.

Termination of Fair Fund

88. 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) any remaining funds have been paid to the Commission for transfer to the United States Treasury.

Document Retention and Wrap-Up

89. Pursuant to Commission direction, the Fund Administrator will either turn over to the Commission or destroy all documents, including documents in any media, 6 years after the approval of the final accounting.

90. The Fund Administrator will shut down the toll-free telephone number and the Fair Fund's Website upon the transfer of any remaining funds to the Commission.

D. Notice and Comment Period

91. The Notice of the Proposed Plan of Distribution and Opportunity for Comment ("Comment Notice") will be published 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 30 days of the publication of the Comment 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 Numbers 3-16786 and 3-16787" 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 A

PLAN OF ALLOCATION¹

A. Calculation for Recognized Loss (or Gain) per Share

With respect to shares of Bankrate common stock, a Recognized Loss per Share will be calculated as set forth below for each purchase or other acquisition during the Relevant Period that is listed on the Proof of Claim Form and for which adequate documentation is provided. For the purposes of calculations below, Out of Pocket Loss is defined as the purchase/acquisition price minus the sale price, both prices excluding all fees, taxes, and commissions. To the extent that a calculation of a Recognized Loss per Share results in a negative number, that number shall be set to zero.

1. For each share of Bankrate common stock purchased or otherwise acquired between August 1, 2012 and September 15, 2014, inclusive of both dates, and:
 - (a) Sold prior to September 15, 2014, the Recognized Loss per Share is equal to zero.
 - (b) Sold after the opening of trading on September 15, 2014, and prior to the close of trading on October 9, 2014, the Recognized Loss per Share is equal to *the lesser of* (i) \$1.73 and (ii) the Out of Pocket Loss.
 - (c) Sold after the close of trading on October 9, 2014 and prior to the close of trading on January 7, 2015, the Recognized Loss per Share shall be *the lesser of* (i) \$2.69 and (ii) the Out of Pocket Loss.
 - (d) Held as of the close of trading on January 7, 2015, the Recognized Loss per Share is equal to Purchase Price minus \$11.39.
2. For each share of Bankrate common stock purchased or otherwise acquired after September 15, 2014 and before the close of trading on October 9, 2014, and:
 - (a) Sold prior to the close of trading on October 9, 2014, the Recognized Loss per Share is equal to zero.
 - (b) Sold after the close of trading on October 9, 2014 and prior to the close of trading on January 7, 2015, the Recognized Loss per Share is equal to *the lesser of* (i) \$0.96 and (ii) the Out of Pocket Loss.

¹ Unless defined in this Exhibit B, all capitalized terms have the meanings defined in the Plan.

- (c) Held as of the close of trading on January 7, 2015, the Recognized Loss per Share is equal to the purchase price minus \$11.39.

B. Additional Provisions

1. Short sale transactions shall not be eligible for recovery.
2. For each investor who held shares of Bankrate as of the beginning of the Relevant Period or made multiple purchases or sales during the respective Relevant Period the First In/First Out (“FIFO”) method will be applied. 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 and will be discarded from the Recognized Loss per Share calculation. The remaining sales of shares during the Relevant Period will then be matched, in chronological order, against shares purchased during the Relevant Period.
2. The date of acquisition or sale is the “trade” date as opposed to the “settlement” date.
3. With respect to the calculations made pursuant to Section A above, each Eligible Claimant’s Recognized Loss per Share will be totaled (the “Eligible Loss Amount”). If the Eligible Loss Amount is a positive number, that will be the Eligible Claimant’s Eligible Loss Amount, otherwise the value of the Eligible Claimant’s Eligible Loss Amount will be zero.
4. Each Eligible Claimant will receive a distribution payment, so long as their Eligible Loss Amount calculated pursuant to the Plan of Allocation, results in a payment to an amount that is equal to or greater than \$10.00. To the extent there are sufficient funds in the Net Available Fair Fund, each Eligible Claimant will receive an amount equal to the Eligible Claimant’s Eligible Loss Amount. If, however, the sum total of Eligible Loss Amount of all Eligible Claimants who are entitled to receive payment out of the Net Available Fair Fund is greater than the Net Available Fair Fund, each Eligible Claimant shall receive his, her, or its *Pro Rata* Share of the Net Available Fair Fund. The *Pro Rata* Share shall be the Eligible Claimant’s Eligible Loss Amount divided by the total of Eligible Loss Amounts of all Eligible Claimants, multiplied by the total amount in the Net Available Fair Fund.
5. The sum of claims paid to an Eligible Claimant from the Class Action and from the Fair Fund shall not exceed the Eligible Claimant’s total Out of Pocket Loss. The Fund Administrator shall adjust the distribution amount from the Fair Fund in order to avoid payment of a windfall.