UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5771 / July 9, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20391

In the Matter of **KESTRA PRIVATE WEALTH SERVICES, LLC** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Kestra Private Wealth Services, LLC ("Kestra PWS" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. Kestra PWS, a registered investment adviser, breached its fiduciary duty to advisory clients by failing to provide full and fair disclosure regarding two types of compensation paid to its affiliated broker (referred to herein as the "Affiliated Broker", as more specifically defined in paragraph 6 below) and the conflicts of interest related thereto. First, since at least January 2014, the Affiliated Broker received revenue sharing payments from an unaffiliated clearing broker ("Clearing Broker") as a result of Kestra PWS's advisory clients' investments in certain mutual funds. Certain of the mutual funds that paid revenue sharing were more expensive than lower-cost options available to clients, including instances when there were lower-cost share classes of the same mutual funds available to clients that did not result in any revenue sharing. Second, since at least January 2014, the Affiliated Broker received compensation resulting from transaction fees charged on mutual fund trades and non-transaction fees for certain services provided to Kestra PWS's advisory clients, which were greater than the amount charged to the Affiliated Broker by the Clearing Broker for those trades and services (collectively, "fee markups").

2. Kestra PWS also breached its duty to seek best execution by causing certain advisory clients to invest in share classes of mutual funds that paid revenue sharing when share classes of the same funds were available to the clients that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions.

3. Furthermore, Kestra PWS failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection, fee markup practices, and best execution.

Respondent

4. Respondent Kestra PWS is a Delaware limited liability company and is headquartered in Austin, Texas. Kestra PWS first became registered with the Commission as an investment adviser in November 2010 through a predecessor firm, Washington Wealth Management, LLC. In its most recent annual updating amendment to Form ADV, filed March 31, 2021, Kestra PWS reported regulatory assets under management of $2,998,016,363.

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[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

Related Entity

5. Kestra Investment Services, LLC ("Kestra IS") is a Texas limited liability company and is headquartered in Austin, Texas. Kestra IS has been registered with the Commission as a broker-dealer since March 1997 through predecessor firms, NFP Securities Inc. (December 1998 – September 2014) and NFP Advisor Services, LLC (September 2014 – April 2016). Kestra IS shares common ownership and certain management with Kestra PWS.

Relevant Corporate History

6. As of 2014, Kestra IS was a single, dual registrant named NFP Advisor Services, LLC (and previously NFP Securities, Inc., collectively ("NFP")). In April 2016, NFP separated its advisory and brokerage businesses, rebranding its brokerage business as a stand-alone broker-dealer, Kestra IS, and transferring the advisory business to a new affiliate successor entity. The term "Affiliated Broker" herein, refers to NFP in its capacity as a broker-dealer and Kestra IS as an affiliate of Kestra PWS, as applicable for the different time periods.

7. Kestra PWS advised its clients to use the Affiliated Broker as the introducing broker for their accounts that Kestra PWS managed and most Kestra PWS clients did use the Affiliated Broker. Through the Affiliated Broker, nearly all of Kestra PWS's advisory clients used the Clearing Broker for clearing and custody.

Clearing Broker Revenue Sharing Payments

8. Mutual funds typically offer different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among share classes is the fee structure.

9. For example, some mutual fund share classes charge higher fees to cover costs of fund distribution and shareholder services. These fees negatively affect investor returns as the charges are deducted from the mutual fund's assets. As a result, clients are often, though not always, better off investing in a mutual fund share class that does not include these additional fees versus a share class of the same fund that charges such a fee.

10. Many mutual funds pay the Clearing Broker a recurring fee to have some or all of their fund share classes offered as part of the Clearing Broker's mutual fund programs. The Affiliated Broker had an agreement with its Clearing Broker referred to as the Fully Disclosed Clearing Agreement ("FDCA"). Since at least January 2014, pursuant to the FDCA, the Clearing Broker would share this recurring fee (i.e., mutual fund revenue) with the Affiliated Broker based on Kestra PWS's client assets invested in certain mutual funds.[2] The Clearing Broker did not pay the Affiliated Broker any form of revenue sharing for some mutual funds and certain share classes of mutual funds.

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[2] Kestra PWS clients indirectly paid these fees when they were included in the expense ratio of the mutual funds in which they invested.

No Transaction Fee Program Revenue Sharing

11. From at least January 2014, the Clearing Broker had a "no transaction fee" ("NTF") program ("NTF Program") for which it did not charge a transaction fee for the purchase or sale of mutual funds in the NTF Program. The Clearing Broker generally charged fund families a higher recurring fee for a mutual fund to be part of the NTF Program as compared to being sold outside of that program. As a result, mutual fund share classes sold through the NTF Program generally had higher expense ratios than mutual fund share classes sold outside that program.

12. From at least January 2014, the Affiliated Broker had a revenue sharing arrangement with the Clearing Broker pursuant to which the Clearing Broker would share with the Affiliated Broker a portion of the recurring fee (i.e., mutual fund revenue) it received from mutual fund investments that were part of its NTF Program. The percentage that the Clearing Broker shared increased with the level of the Affiliated Broker customer, including Kestra PWS client, assets invested in those NTF mutual funds. Lower-cost share classes of those same funds were also generally available for which the Clearing Broker would have paid no or lower revenue sharing.

Transaction Fee Program Revenue Sharing

13. From at least January 2014, the Clearing Broker also had a "transaction fee" ("TF") program ("TF Program") for which it charged a transaction fee for the purchase or sale of mutual funds in the TF Program. The Clearing Broker generally charged a mutual fund a lower recurring fee (i.e., mutual fund revenue) if it was part of the TF Program as opposed to the NTF Program.

14. Since at least January 2014, the Clearing Broker paid the Affiliated Broker a fixed dollar amount for each of the Affiliated Broker's customers', including Kestra PWS's clients', positions in TF mutual funds. The fixed dollar amount that the Clearing Broker paid to the Affiliated Broker increased as the amount of all customer positions increased.

Institutional No Transaction Fee Program Revenue Sharing

15. Many mutual funds also offer lower-cost share classes that do not pay 12b-1 fees pursuant to Rule 12b-1 ("12b-1 fees") under the Investment Company Act of 1940 and make less or no recurring payments relating to shareholder servicing, and thus have lower expense ratios than other share classes for the same fund (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")).[3] An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that has a higher expense ratio.

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[3] Share classes that do not charge 12b-1 fees or otherwise have lower expense ratios than other share classes in a fund also go by a variety of other names in the mutual fund industry. Examples may, though not always, include "Advisor," "Class F2," "Class Y" and "Class Z" shares.

16. Beginning in at least May 2017, the Clearing Broker began offering institutional mutual fund share classes for which it also did not charge a transaction fee ("iNTF") for the purchase or sale of mutual funds ("iNTF Program"). The Clearing Broker generally charged a mutual fund a lower recurring fee if they were part of the iNTF Program as opposed to the NTF Program.

17. Since at least May 2017, the Clearing Broker paid the Affiliated Broker a fixed percentage of the revenue it received from the Affiliated Broker's customers', including Kestra PWS's clients', assets invested in iNTF mutual funds.

Fee Markups

18. The FDCA, among other things, sets forth the amounts the Affiliated Broker paid the Clearing Broker for the Affiliated Broker's brokerage customers, which included Kestra PWS advisory clients. The FDCA and Exhibit A (and its subsequent amendments) acknowledged that the Affiliated Broker established the fee schedule for its brokerage customers. The Affiliated Broker passed on to its brokerage customers certain Clearing Broker charges and fee markups for certain services.

19. From at least January 2014, the Affiliated Broker set its brokerage fees for several services, including, for example, charges associated with account-level, non-transaction services (e.g., annual custody fees) at an amount that included a fee markup. For example, since at least January 2014, the Affiliated Broker had the Clearing Broker charge the Affiliated Broker's customers an annual custody fee that was $20.00 more than what the Clearing Broker charged the Affiliated Broker for the Clearing Broker's custodial services.

20. Kestra PWS's advisory clients paid the total fees, and the Clearing Broker credited the fee markups to the Affiliated Broker's account with the Clearing Broker. The Affiliated Broker retained the fee markup.

Disclosure Failures

21. As an investment adviser, Kestra PWS was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself or its associated persons and its clients that could affect Kestra PWS's advice to its clients. To meet this fiduciary obligation, Kestra PWS was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning Kestra PWS's advice and have an informed basis on which to consent to or reject the conflicts.

Revenue Sharing Disclosure Failures

22. As a result of the revenue sharing agreements, Kestra PWS had an incentive to recommend mutual funds and mutual fund share classes that paid the Affiliated Broker revenue sharing as opposed to those that did not.

23. From at least January 2014, Kestra PWS failed to provide full and fair disclosure of all material facts regarding its conflicts of interest that arose when it invested advisory clients in mutual funds and mutual fund share classes that paid revenue sharing to the Affiliated Broker. For example, prior to July 2016, Kestra PWS provided no disclosure that the Affiliated Broker received any revenue sharing from the Clearing Broker based on client investments.

24. Kestra PWS for the first time mentioned NTF revenue sharing from the Clearing Broker in its Form ADV, Part 2A ("Brochures") in July 2016, TF revenue sharing in May 2019, and iNTF revenue sharing in September 2020. When initially made, however, these disclosures generally failed to provide full and fair disclosure of all material facts regarding the conflict of interest. In addition, Kestra PWS stated in its Brochures that "[w]e will update this section of the brochure on an annual basis and send a summary of any material changes." However, throughout the relevant period, Kestra PWS did not identify any of these new disclosures in the summary of material changes. Thus, legacy clients (i.e., those clients who received an initial brochure before the updated disclosures), were not on notice of the new disclosures. Kestra PWS also never disclosed that the Affiliated Broker did not receive revenue sharing on certain mutual funds or certain share classes of mutual funds.

Fee Markup Disclosure Failures

25. Kestra PWS had an incentive to recommend that clients use the Affiliated Broker because the Affiliated Broker financially benefited from the fee markups.

26. From at least January 2014, Kestra PWS failed to provide full and fair disclosure of all material facts regarding its conflicts of interest that arose when it recommended that clients use the Affiliated Broker. On March 31, 2019, Kestra PWS updated its Brochure to provide information regarding fee markup conflicts. Kestra PWS, however, did not identify this disclosure in the summary of material changes provided to legacy clients.

Best Execution Failures

27. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.[4]

28. By causing certain advisory clients to invest in share classes of mutual funds that were more expensive for clients when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, Kestra PWS violated its duty to seek best execution for those transactions.

[4] *See, e.g.*, Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

Compliance Deficiencies

29. Since at least January 2014, Kestra PWS had adopted written policies and procedures requiring disclosure of all conflicts of interest between it and its clients. Since that time, Kestra PWS also had adopted written policies and procedures providing that it had an obligation to seek best execution. However, Kestra PWS did not adequately implement these policies and procedures to disclose the conflicts of interest presented by its mutual fund share class selection practices and fee markups or to seek best execution.

30. In addition, while Kestra PWS's written policies and procedures explained that it "has an undivided duty of loyalty to act in the best interests of its clients" and "make full and fair disclosure of all material facts," Kestra PWS did not adopt or implement written, policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Violations

31. As a result of the conduct described above, Respondent willfully[5] violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180,194-95 (1963)).

32. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Disgorgement

33. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and does not exceed the net profits from the violations, and will be distributed to harmed investors to the extent feasible pursuant to the respondent-administered distribution described in Section IV below. Any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3)

[5] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act, "'means no more than that the person charged with the duty knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

of the Exchange Act.

Undertakings

Respondent has undertaken to:

34. Within 60 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning revenue sharing and fee markups.

35. Within 60 days of the entry of this Order evaluate whether existing clients should be moved to an available lower-cost share class and move clients as necessary.

36. Within 60 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with revenue sharing, fee markups, and best execution.

37. Within 60 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices detailed above (hereinafter, "affected investors")) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

38. Within 90 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) set forth in paragraphs 34 through 37 above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

39. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling $299,569 as follows:

(i) Respondent shall pay disgorgement of $208,187, prejudgment interest of $31,382, and a civil penalty of $60,000, consistent with the provisions of this Subsection C.

(ii) Within ten (10) days of the entry of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the "Fair Fund"), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(iv) Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(v) Respondent shall distribute from the Fair Fund to each affected investor an amount representing the financial harm incurred by the affected investor with reasonable interest paid on such financial harm, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vi) Respondent shall, within sixty (60) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution to be available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(vii) Respondent shall, within ninety (90) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor; (2) the exact amount of the payment to be made; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid.

(viii) Respondent shall complete the disbursement of all amounts payable to affected investors within one hundred twenty (120) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xii) of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the final distribution.

(ix) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for further disposition as approved by the Commission, when the distribution of funds is complete and before the final accounting provided for in Paragraph xi of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(c) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Kestra Private Wealth Services, LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address as the Commission staff may provide.

(x) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent shall be responsible for all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act, and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xi) Within one hundred eighty (180) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate any prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, shall be sent to Kimberly L. Frederick, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(xii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 34 through 38 above.

By the Commission.

Vanessa A. Countryman
Secretary