

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,**

v.

**ICP ASSET MANAGEMENT, LLC,
ICP SECURITIES, LLC,
INSTITUTIONAL CREDIT PARTNERS, LLC, and
THOMAS C. PRIORE,
Defendants,**

-and-

**THOMAS C. PRIORE,
LORI A. PRIORE, and
BERTRAND H. SMYERS,
Relief Defendants.**

**Case No.:
10-cv-4791-LAK-JCF**

**Notice of Motion and Motion
for an Order Approving a
Plan of Distribution**

**TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND ENTITIES THAT
SUBMITTED CLAIMS IN THE CLAIMS PROCESS PURSUANT TO ECF NO. 273:**

PLEASE TAKE NOTICE that, upon the accompanying Motion, Memorandum, Declaration, and Proposed Order, and all related papers and proceedings, Plaintiff, the Securities and Exchange Commission (the "SEC") will move this Court for an Order approving its proposed distribution plan, attached to the accompanying proposed order as Exhibit 1.

The SEC will cause a copy of this Notice of Motion and accompanying papers to be sent to the last known address or email of all entities that submitted claims to the Distribution Agent pursuant to the claims process authorized by this Court by Order dated August 17, 2020, ECF No. 273. The SEC further will post the filing on the SEC public webpage for this matter (<https://www.sec.gov/enforcement/information-for-harmed-investors/icp-asset>), and ask the Distribution Agent to post it on the distribution website (<https://icpfairfund.com/>).

MOTION

Plaintiff, the SEC, respectfully submits this Motion for an Order approving a plan (the “Plan”) for the distribution of more than \$22 million to compensate investors for losses suffered due to the misconduct alleged in the Complaint from investments in certain collateralized debt obligations: Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd. (the “Triaxx CDOs”), as well as in credit default swaps entered into with issuers of the Triaxx CDOS.

The SEC will cause a copy of this Motion and accompanying papers to be sent to all entities that submitted claims to the Distribution Agent pursuant to the claims process authorized by this Court by Order dated August 17, 2020, ECF No. 273. The SEC further will post the filing on the SEC public webpage for this matter (<https://www.sec.gov/enforcement/information-for-harmed-investors/icp-asset>), and ask the Distribution Agent to post it on the distribution website (<https://icpfairfund.com/>).

Accompanying this Motion is a Memorandum setting forth the grounds for approving the Plan, a Declaration of the Distribution Agent, and a proposed Order to which the Plan is attached.

WHEREFORE, the SEC respectfully requests that the Court enter the accompanying Order approving the Plan.

Dated: May 15, 2023

Respectfully submitted,

s/Catherine E. Pappas
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Exchange Commission*

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2023, I electronically filed the foregoing Notice of Motion and supporting documents with the Clerk of the Court using CM/ECF, thereby effecting service on the interested parties listed below. I also caused a copy of the Notice of Motion and supporting documents to be sent to the last known address or email of all investors who submitted claims to the Distribution Agent pursuant to the claims process authorized by this Court by Order dated August 17, 2020, ECF No. 273.

/s/Catherine E. Pappas
Catherine E. Pappas

SERVICE LIST

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**- UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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LORI A. PRIORE, and
BERTRAND H. SMYERS,**

**Defendants and
Relief Defendants**

**Case No.:
10-cv-4791-LAK-JCF**

**SEC'S MEMORANDUM IN SUPPORT OF MOTION
FOR AN ORDER APPROVING A DISTRIBUTION PLAN**

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I. Introduction

Plaintiff, the Securities and Exchange Commission (the “SEC”), respectfully submits this memorandum in support of its motion for an order approving its proposed plan to distribute approximately \$22.8 million (the “Plan”) to compensate investors for harm suffered from direct or indirect investments in four multi-billion-dollar collateralized debt obligations (the “Triaxx CDOs”).¹ *See* Plan attached as Exhibit 1 to the accompanying proposed order. Specifically, the Plan seeks to compensate investors for harm suffered in investments in the Triaxx CDOs due to the misconduct described in the Complaint, as well as in credit default swaps entered into with issuers of the Triaxx CDOs.

Upon the filing of the motion, the SEC will cause a copy of the motion and supporting papers to be sent to the last known address or email of all entities that submitted claims to the Distribution Agent pursuant to the claims process authorized by this Court by Order dated August 17, 2020, ECF No. 273. The SEC further will post the filing on the SEC public webpage for this matter (<https://www.sec.gov/enforcement/information-for-harmed-investors/icp-asset>), and ask the Distribution Agent to post it on the distribution website (<https://icpfairfund.com/>).

For the reasons set forth below, the SEC respectfully requests that the Court enter an Order approving the Plan substantially in the form accompanying this memorandum.

II. Background

By Complaint filed on June 21, 2010, amended on June 30, 2011,² the SEC charged ICP Asset Management LLC (“ICP”); ICP Securities, LLC (“ICPS”); Institutional Credit Partners, LLC (“ICP Holdco”); and Thomas C. Priore (“Priore”) (collectively, the “Defendants”) with

¹ Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd. ECF Nos. 1, 54.

repeated violations of the federal securities laws. Beginning in 2006, ICP was the asset manager of the Triaxx CDOs. The SEC alleged that, starting in 2007, as the mortgage markets deteriorated, the Defendants engaged in a range of improper transactions that defrauded the Triaxx CDOs of tens of millions of dollars and placed them at risk of substantial additional losses in the future.

The SEC charged the Defendants, variously, with violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5; Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78o(c)(1)(A) and Exchange Act Rule 10b-3, 17 C.F.R. § 240.10b-3; Sections 206(1), 206(2), 206(3) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(3), and 80b-6(4) and Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8; and Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Advisers Act Rule 204-2 and 206(4)-7, 17 C.F.R. §§ 275.204-2 and 275.206(4)-7.

The SEC further alleged that, in March 2010, after the SEC staff indicated that it intended to recommend an enforcement action, Priore transferred assets into trusts that he had created during the SEC's investigations; and named Thomas C. Priore, Lori A. Priore, and Bertrand H. Smyers, the trustees of those trusts, as relief defendants (collectively, the "Relief Defendants").

The litigation initiated by the Complaint is complete. By stipulation entered on September 6, 2012,³ the SEC dismissed counts X-XV of the Amended Complaint, thereby resolving the charges with respect to the Relief Defendants. By a final judgment entered on the

³ ECF No. 225.

consent of the Defendants on September 12, 2012 (the “Final Judgment”),⁴ the Court ordered, in relevant part:

- ICP Holdco and ICP, jointly and severally, to pay to the SEC disgorgement of \$13,916,005 and prejudgment interest of \$3,709,028, for a total of \$17,625,033;
- ICP to pay to the SEC a civil penalty of \$650,000;
- ICPS to pay to the SEC disgorgement of \$1,637,581, prejudgment interest of \$301,893, and a civil penalty of \$1,939,474; and
- Priore to pay to the SEC disgorgement of \$797,337, prejudgment interest of \$215,045, and a civil penalty of \$487,618 pursuant to a payment schedule.

The Final Judgment directs the SEC to hold collections, together with any interest or income earned thereon, pending further Court order. Pursuant to the Final Judgment, the SEC may propose a plan to distribute the funds subject to the Court’s approval. Since the Final Judgment, the SEC has collected approximately \$22 million of the approximately \$23.6 million ordered.

By Order entered February 10, 2017, the Court established a Fair Fund so that collected civil penalties along with collected disgorgement and prejudgment interest, can be distributed to harmed investors (the “Fair Fund”); appointed Miller Kaplan Arase LLP (“Miller Kaplan”) as the tax administrator for the Fair Fund; and appointed Nichola L. Timmons, an SEC employee, as fund administrator for the Fair Fund (the “Fund Administrator”).⁵ The Court further authorized the Fund Administrator to retain an expert at the expense of the Fair Fund to assist with the development of a distribution plan. The Fund Administrator retained Securities Litigation and Consulting Group (“SLCG”) as an expert to assist with the development of a distribution plan.⁶

⁴ ECF No. 226.

⁵ ECF No. 260. The Order references Damasco and Associates, LLC (“Damasco”). As of October 1, 2016, Damasco and Associates, LLC became part of Miller Kaplan.

⁶ ECF No. 265 (Docket entry only), *see* ECF No. 261-1 for the approved order.

III. The Fair Fund

The Fair Fund of approximately \$22.8 million includes collections and accrued interest and is held in an interest bearing account at the U.S. Treasury. Additional collections, funds directed to the Fair Fund by Court Order or otherwise, and accrued interest will be added to, and become a part of, the Fair Fund.⁷

IV. The Appointment of a Distribution Agent and the Claims Process

Based on both SLCG's initial analysis and communications from potential victims, on August 7, 2020, the SEC moved the Court to appoint a distribution agent to, among other things, solicit claims from entities that may have suffered harm as a result of the misconduct described in the Complaint, and to work with the SEC staff and SLCG to review the claims and draft and implement a plan of distribution.⁸ The Court granted the SEC's motion, appointing RCB Fund Services LLC as the distribution agent (the "Distribution Agent") and discharging the previously appointed Fund Administrator (the "Claims Process Order").⁹ In accordance with the Claims Process Order, the Distribution Agent has completed its solicitation of claims, as further described below and in the accompanying Declaration of Distribution Agent in Support of Motion for an Order Approving a Distribution Plan ("Declaration").

Beginning in the fall of 2020, the Distribution Agent, working with the SEC staff and SLCG, compiled a list of entities that may have suffered harm as a result of the misconduct described in the Complaint. Specifically, the Distribution Agent, working with the SEC staff and

⁷ After approval of a distribution plan in this action, the SEC anticipates seeking from the district court in the SEC's related action, *SEC v. Abdullah*, 10-cv-4957 (LAK) (S.D.N.Y.) (the "*Abdullah* Action"), an Order authorizing the combination of collected funds in that action with the ICP Fair Fund for distribution pursuant to the approved plan.

⁸ ECF No. 271.

⁹ ECF No. 273 (August 17, 2020).

SLCG, identified approximately 80 unique investors from a listing of nearly 300 Triaxx CDO noteholders and Deposit Trust Company (“DTC”)¹⁰ participants. Declaration, ¶ 3. The Distribution Agent sent a notice to those on its list in the form attached as Attachment 1 to Declaration, soliciting claims of economic loss related to investments in the Triaxx CDOs from the inception of each Triaxx CDO through the time of the claim. *Id.*, ¶ 4 and Attachment 1 (the “Fair Fund Notice”).

By the Fair Fund Notice, the Distribution Agent informed potential claimants of the existence of the ICP Fair Fund and invited them to submit a claim and supporting documentation if they believed that they had suffered an economic loss in connection with investments in the Triaxx CDOs. Declaration, ¶ 4. The Fair Fund Notice further informed investors that, subsequent to the submission and evaluation of claims, the Distribution Agent, in consultation with the SEC staff and SLCG, would formulate a proposal to the Court about how the ICP Fair fund would be distributed and what harm would be compensated. *Id.* Although the Fair Fund Notice required submissions to be postmarked within 60 days from the date of the notice, the Distribution Agent, in consultation with the SEC staff, accepted all late submissions. *Id.*

At the same time, the Distribution Agent established a publicly available website on which it posted the Fair Fund Notice and claim forms, a toll-free telephone number, and traditional and email addresses, to facilitate communications with potential claimants. *Id.*, ¶ 5.

In response to the Fair Fund Notice, the Distribution Agent received eighty-nine (89) claim submissions (the “Claims”). *Id.*, ¶ 6. After initially reviewing the Claims and consulting with the SEC staff and SLCG, the Distribution Agent contacted many of the claimants and/or their representatives (collectively, the “Claimants”) to obtain additional documentation and/or

¹⁰ DTC provided clearing services for the Triaxx CDOs.

information regarding the Claims. *Id.* Upon completion of this process, the Distribution Agent, working with the SEC staff and SCLG (collectively, the “Reviewers”), reviewed the claims to determine the appropriate parameters for a distribution plan. *Id.*, ¶ 7.

The Reviewers determined that the Plan would seek to compensate both those who invested directly in the Triaxx CDOs and those who entered into credit default swaps with the issuers of the Triaxx CDOs (the “Investments”). *Id.* Based on the economic losses described by the Claimants, the Reviewers determined a money in/ money out loss calculation to best reflect the economic losses (the “Proposed Methodology”). *Id.* Further, the Reviewers determined it appropriate to limit the claims to those Claimants who purchased and/or held their Investment during the period September 1, 2006 through June 21, 2010, inclusive (the “Relevant Period”).¹¹ *Id.*, ¶ 8.

The Reviewers evaluated all claims in accordance with the Proposed Methodology and the Relevant Period limitation, to determine which Claimants suffered an economic loss as a result of their investment. *Id.*, ¶ 9. The review process involved identifying and verifying that the Claimant had adequately proven an economic loss in connection with an investment in the Triaxx CDOs. This included reviewing documentation of the original investment(s), reviewing any cash flows relating to the investment and any recoveries received by the Claimant. In addition, as part of the review process, the Distribution Agent and SCLG reviewed the publicly-available trustee reports that detail certain cash flows relating to the Triaxx CDOs. *Id.*, ¶ 10.

In or around April 2022, the Distribution Agent sent a Claim Status Notice to each of the 88 Claimants that the Reviewers preliminarily determined ineligible for a distribution, describing the Proposed Methodology and notifying each as to its preliminary findings with respect their

¹¹ The first Triaxx CDO product was launched in September 2006 and June 21, 2010 is the date the SEC filed its Complaint in this matter. *Id.*

respective Claims. *Id.*, ¶ 11. The Distribution Agent gave each Claimant thirty (30) days to dispute the Proposed Methodology, the Distribution Agent’s preliminary determination of ineligibility, and/or to supplement their claims. *Id.* The Distribution Agent received one response to the Claim Status Notice. After consideration of this response and additional documentation provided by the Claimant, the Distribution Agent determined the claim eligible for a distribution under the Proposed Methodology. *Id.*

Ultimately, the Reviewers determined eighty-seven (87) of the submissions ineligible for a distribution as follows: seventy-one (71) involved investments made after the filing of the SEC’s Complaint; eight (8) did not demonstrate an economic loss after offsetting interest payments, outside recoveries, and other investment recoveries by the Claimant; and eight (8) duplicated other claim submissions (the “Preliminary Dispositions”). *Id.*, ¶ 12.

In September 2022, the Distribution Agent sent Claim Status Notices to the two Claimants preliminarily determined eligible for a distribution, describing the Proposed Methodology, quantifying their eligible loss amount as determined under that Proposed Methodology, and giving them a chance to object to the Proposed Methodology, the Distribution Agent’s preliminary Eligible Loss Amount¹² determination, and/or to supplement their claims. *Id.*, ¶ 13. The Distribution Agent did not receive any objection to the Proposed Methodology and/or its determinations, and no Claimant supplemented its claims. *Id.*

If the Court approves the Plan, and if there are no changes to the Distribution Agent’s preliminary determinations after the Third-Party Review described in paragraph 38 of the Plan, the SEC anticipates that two Claims, with Eligible Loss Amounts of (approximately) \$4.7 million and \$2.1 billion, will be eligible for a *pro rata* distribution from the ICP Fair Fund,

¹² Capitalized terms not defined in this Memorandum are used as defined in the Plan.

compensating approximately 1.04% of their respective Eligible Loss Amounts. *Id.*, ¶ 14. If and when the Court approves the Plan, and upon completion of the Third-Party Review, the Distribution Agent will send a final determination notice to each Claimant setting forth the Distribution Agent's final determination of their Claim under the Court-approved distribution plan. *Id.*, ¶ 14 and Plan ¶ 39.

V. The Plan is Fair and Reasonable and Should be Approved

The SEC, the Distribution Agent, and SLCG jointly developed the Plan to compensate investors for losses to investors caused by the misconduct described in the Complaint in connection with the Triaxx CDOs. The Court should approve the Plan because it fairly and reasonably allocates the Fair Fund to harmed investors.

A. The Applicable Standard of Review

A district court has broad authority in approving a plan of distribution, and that determination is reviewed for abuse of discretion. *See Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006); *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991). *Cf. Horwitt v. Flatiron Partners, LP, et al.*, 21-2245(L), 21-2247 (Con), 2023 WL 192500, *1 (2d Cir. Jan. 17, 2023) (applying an abuse of discretion standard to a district court's ruling on the application of distribution plan in the context of approval of a plan presented by a receiver); *Commodity Futures Trading Comm v. Walsh*, 712 F.3d 735, 749 (2d Cir. 2013) (reviewing a district court's approval of a receiver's distribution plan for abuse of discretion); *SEC v. Byers*, 637 F. Supp. 2d 166, 174 (S.D.N.Y. 2009) (a district court has broad authority in approving a receiver's plan of distribution). District courts review the SEC's proposed distribution plans to determine whether the plans fairly and reasonably distribute funds to the potential claimants. *See Wang*, 944 F.2d at 85; *SEC v. AR Capital, LLC*, 19 Civ. 6603 (AT),

2021 WL 1988084, *3 (S.D.N.Y. May 18, 2021); *SEC v. CR Intrinsic Investors, LLC*, 164 F. Supp. 3d 433, 435-36 (S.D.N.Y. 2016). *Cf. Horwitt*, 2023 WL 192500, *2 (applying the fair and reasonable standard to the application of a Receiver’s distribution plan); *SEC v. Amerindo Inv. Advisors*, 639 F. Appx 752, 755 (2d Cir. 2016) (quoting *Wang*, finding adequate the district court’s finding that the receiver’s proposed distribution was fair and reasonable); *Byers*, 637 F. Supp. 2d at 168, 174 (same).

B. The Plan Provides Fair and Reasonable Methods by Which to Analyze Claims and Distribute the Fair Fund

The Plan provides fair and reasonable parameters by which to determine if, and by what amount, an investor has been harmed by the misconduct underlying the Complaint, as well as fair and reasonable procedures by which to distribute the Fair Fund. As discussed above and in the Declaration, the Distribution Agent solicited claims from investors of record in the Triaxx CDOs and others, including, though the public posting of the Fair Fund Notice, anyone who could claim an economic loss due to the misconduct described in the Complaint. The Plan includes as “Claimants,” any Persons, or their lawful successors, who submitted a claim in response to this process.¹³

Based on the investments described by Claimants in their Claims, the Plan includes as “Securities”¹⁴ both direct investments in the Triaxx CDO and investments in credit default swaps with the issuers of the Triaxx CDOs. The Plan is designed to compensate investors for losses in investments in the Securities made from September 1, 2006 through June 21, 2010, inclusive (the “Relevant Period”), including Securities received, or cash settlements made, during the Relevant Period pursuant to swaps entered into with issuers of the Securities prior to the Relevant Period.

¹³ Plan, ¶ 15.

¹⁴ Plan, ¶ 29.

The Relevant Period includes the first possible date for investments in connection with the Triaxx CDOs, and ends on the date that the SEC's allegations against the Defendants became public,¹⁵ thereby putting investors on notice of issues with that investment.¹⁶ *See AR Capital*, 2021 WL 1988084 at *5 (finding the SEC's use of the fraud announcement date as the cutoff date in a distribution plan fair and reasonable)

The Plan excludes those responsible for the harm suffered and/or who benefitted from the misconduct: the Defendants, their officers and directors, and related parties; the Relief Defendants and their related parties; the defendant in the related *Abdullah* Action and his related parties,¹⁷ employees of the Defendant terminated for cause in connection with the misconduct; and persons convicted of criminal charges related to the misconduct.¹⁸ *See SEC v. McGinn, Smith & Co.*, 10-cv-457, 2019 WL 1060650, *3 (N.D.N.Y. Mar. 6, 2019) (and the cases cited therein) (district courts have discretion to exclude claimants involved in the underlying scheme). It also excludes the employees of the Distribution Agent and SLCG to avoid any conflicts of interest, as well as entities that seek to capitalize on the distribution through the exclusion of any entity that seeks to recover by purchasing for value a Claimant's purported right to a Distribution Payment.¹⁹

Again based on the information provided in the Claims, the Plan proposes to calculate each Claimant's Eligible Loss Amount as the difference between the cost of the investment and any recovery. For direct investments in the Triaxx CDOs, this is (generally) the difference

¹⁵ *See* <https://www.sec.gov/divisions/enforce/claims/icp-asset-complaint.pdf>.

¹⁶ Plan, ¶ 28. Capitalized terms not otherwise defined in this memorandum are used as defined in the Plan.

¹⁷ *See* Note 8, above. In the *Abdullah* action, the SEC charged Aamer Abdullah, a portfolio manager at ICP, for his participation in the misconduct described in the captioned action.

¹⁸ Plan, ¶ 21a-d.

¹⁹ Plan, ¶ 21e-g.

between the total purchase cost of the investment in the Triaxx CDOs, and any recoveries on the investment.²⁰ With respect to credit default swaps entered into with the issuers of the Triaxx CDOs, the Eligible Loss Amount generally will be calculated as the difference between the amount paid to purchase securities the credit default swaps or cash payments made to offset losses that investors in the Triaxx CDOs otherwise would have borne in connection with investments in the Triaxx CDOs during the Relevant Period, and any recoveries related to those payments.²¹ Those Claimants who invested or held the Securities during the Relevant Period, are not excluded, suffered an Eligible Loss Amount, and whose distribution amount is equal to or greater than \$10.00, will be deemed Payees and receive a Distribution Payment.²²

Both the Claims Process and determination of Eligible Loss Amounts will be subject to a Third-Party Review under the Plan. Specifically, after the Distribution Agent finishes the process of analyzing the Claims and determining Claim amounts in accordance with the Plan, a Third-Party reviewer will review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan of Allocation attached as Exhibit A to the Plan.²³

The SEC anticipates that the Net Available Fair Fund will not have sufficient funds to fully compensate all Eligible Claimants. Under the Plan in this circumstance, the Net Available Fair Fund will be divided *pro rata* among Payees.²⁴ Additional distributions may occur if additional funds are received and/or if otherwise feasible.²⁵

²⁰ See Plan, Exhibit A.

²¹ See *id.*

²² Plan, ¶¶ 18, 19, 24.

²³ See Plan ¶ 40.

²⁴ Plan, Exhibit A, Distribution Amount.

²⁵ Plan ¶ 58.

Upon completion of the final distribution, the SEC staff will file a motion with this Court to approve the final accounting, including a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) of the Exchange Act²⁶ and *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to investors is infeasible, the SEC staff may recommend that the monies be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.²⁷ In moving this Court to approve the final accounting, the SEC staff will also seek from the Court an Order that discharges the Distribution Agent and terminates the Fair Fund.

The SEC believes that the Plan, as summarized above, fairly and reasonably distributes the Fair Fund to investors harmed by the conduct underlying the Complaint and accordingly, respectfully requests that it be approved.

²⁶ 15 U.S.C. §§ 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

²⁷ Proposed Plan, ¶¶ 60, 61. Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

VI. Conclusion

For all of the foregoing reasons, the SEC respectfully requests that the Court approve the Plan and grant such other relief as the Court deems appropriate.

Dated: May 15, 2023

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

ICP ASSET MANAGEMENT, LLC,
ICP SECURITIES, LLC,
INSTITUTIONAL CREDIT PARTNERS, LLC, and
THOMAS C. PRIORE,

Defendants,

-and-

THOMAS C. PRIORE,
LORI A. PRIORE, and
BERTRAND H. SMYERS,

Relief Defendants

Case No.:
10-cv-4791-LAK-JCF

**Declaration of Distribution
Agent in Support of Motion
for an Order Approving a
Distribution Plan**

I, Brendan J. Manfreda, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am Managing Director for RCB Fund Services LLC (“RFS” or “Distribution Agent”), the Distribution Agent in the captioned action, appointed by the Court by Order entered August 17, 2020. I submit this Declaration in support of the Securities and Exchange Commission's (the “SEC”) Motion for an Order Approving a Distribution Plan (the “Plan”).
2. The following statements summarize the services provided by the Distribution Agent since its appointment and are based on my personal knowledge and information provided to me by other experienced RFS employees working under my supervision. If called to testify regarding the facts in this declaration, I could do so competently.
3. Beginning in the fall of 2020, the Distribution Agent, working with the SEC staff and Securities Litigation and Consulting Group, Inc. (“SLCG”), identified approximately 80 unique investors from a listing of nearly 300 Triaxx CDO noteholders and Deposit Trust Company (“DTC”) participants.¹ As described in the next paragraph, the Distribution Agent solicited from the identified entities claims of economic loss related to

¹ DTC performed clearing services for the Triaxx CDOs.

investments in the Triaxx CDOs² from the inception of each Triaxx CDO through the time of the claim.

4. The Distribution Agent sent out a notice of the Fair Fund and claims solicitation (the “Fair Fund Notice”) to potential claimants. A true and correct copy of the Fair Fund Notice is attached as Attachment 1. The Fair Fund Notice informed potential claimants of the existence of the ICP Fair Fund and invited them to submit a claim and supporting documentation if they believed that they had suffered an economic loss in connection with investments in the Triaxx CDOs. The Fair Fund Notice further informed investors that, subsequent to the submission and evaluation of claims, the Distribution Agent, in consultation with the SEC staff and SLCG, would formulate a proposal to the Court about how the ICP Fair fund would be distributed and what harm would be compensated. The Fair Fund Notice required submissions to be postmarked within 60 days from the date of the notice, but the Distribution Agent, in consultation with the SEC staff, accepted all late submissions.

5. At the same time, the Distribution Agent established a publicly available website on which it posted the Fair Fund Notice, a toll-free telephone number, and traditional and email addresses, to facilitate communications with potential claimants.

6. In response to the Fair Fund Notice, the Distribution Agent received eighty-nine (89) claim submissions (“Claims”). After initially reviewing the Claims and consulting with the SEC staff and SLCG, the Distribution Agent contacted many of the claimants and/or their representatives (collectively, the “Claimants”) to obtain additional documentation and/or information regarding the submitted claims.

7. Upon completion of this process, the Distribution Agent, working with the SEC staff and SLCG, reviewed the claims to determine the appropriate parameters for a distribution plan, and determined it appropriate to seek to compensate both those Claimants who invested directly in the Triaxx CDOs and those who entered into credit default swaps with the issuers of the Triaxx CDOs (the “Investments”). Based on the economic losses described by the Claimants, the Distribution Agent, in consultation with the SEC staff and SLCG, determined a money in/money out loss calculation, as described in the Plan, was best to reflect the economic losses (the “Proposed Methodology”).

8. The Distribution Agent, in consultation with the SEC staff and SLCG, further determined it appropriate to limit the claims to those Claimants who purchased and/or held their investment during the period September 1, 2006 through June 21, 2010, inclusive (the “Relevant Period”). By way of further explanation, the first Triaxx CDO product was launched in September 2006, so the use of a starting date of September 1, 2006 allows claims based on the earliest investments in connection with the Triaxx CDOs. The SEC filed its Complaint in this matter on June 21, 2010, after which investors were on notice of the alleged misconduct with respect to the Triaxx CDOs.

² Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd.

9. The Distribution Agent evaluated all claims and supporting documentation in accordance with the Proposed Methodology and the Relevant Period limitation. The Distribution Agent worked with the SEC staff and SLCG to determine, under the Proposed Methodology and the Relevant Time limitation, which Claimants suffered an economic loss as a result of their Investment.

10. The review process involved identifying and verifying that the Claimant had adequately proven an economic loss as a result of an investment in the Triaxx CDOs or credit default swaps entered into with issuers of the Triaxx CDOs. This included reviewing documentation of the original investment(s), reviewing any cash flows relating to the investment and any recoveries received by the Claimant. In addition, as part of the review process, the Distribution Agent and SLCG reviewed the publicly-available trustee reports that detail certain cash flows relating to the Triaxx CDOs.

11. In or around April 2022, the Distribution Agent sent a Claim Status Notice to each of the 88 Claimants preliminarily determined ineligible for a distribution, describing the Proposed Methodology and notifying each as to its preliminary findings with respect to their specific, respective Claims. The Distribution Agent gave each Claimant thirty (30) days to dispute the Proposed Methodology, the Distribution Agent's preliminary determination of ineligibility, and/or to supplement their claims. The Distribution Agent received one (1) response to the Claim Status Notices. After consideration of this response and the supplemental documentation provided, the Distribution Agent preliminarily determined the Claim to be eligible for a distribution under the Proposed Methodology.

12. Ultimately the Distribution Agent, in consultation with SEC staff and SLCG, determined that eighty-seven (87) of the submissions were ineligible for a distribution as follows: seventy-one (71) involved investments made after the filing of the SEC's Complaint; eight (8) did not demonstrate an economic loss after offsetting interest payments, outside recoveries, and other investment recoveries by the Claimant; and eight (8) duplicated other claim submissions.

13. In September 2022, the Distribution Agent sent Claim Status Notices to the two Claimants preliminarily determined eligible for a distribution, describing the Proposed Methodology, quantifying their respective eligible loss amount as determined under the Proposed Methodology, and giving them a chance to object to the Proposed Methodology, the Distribution Agent's preliminary Eligible Loss Amount³ determination, and/or to supplement their claims. The Distribution Agent did not receive any objection to the Proposed Methodology and/or its determinations, or any other response from these two Claimants.

14. If the Court approves the Plan, and if there are no changes to the Distribution Agent's preliminary determinations after the Third-Party Review described in paragraph 38 of the Plan, two Claims, with Eligible Loss Amounts of (approximately) \$4.7 million and \$2.1 billion, will be eligible for a distribution from the ICP Fair Fund, compensating approximately 1.04% of their losses.

³ Capitalized terms not defined in this Declaration are used as defined in the Plan.

15. If and when the Court approves the Plan, and upon completion of the Third-Party Review, the Distribution Agent will send a final determination notice to each Claimant detailing the Distribution Agent's final determination of their claim under the Court-approved distribution plan.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 11, 2023


Brendan J. Manfreda
Managing Director
RCB Fund Services LLC

Attachment 1 (Fair Fund Notice)

Attachment 1
(Fair Fund Notice)



UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ICP FAIR FUND

SEC v. ICP Asset Management, LLC, et al.
1:10-cv-04791 (S.D.N.Y.)



Distribution Agent

Fair Fund Notice

Dear Investor:

This notice is to inform you of the existence of the Fair Fund (the "ICP Fair Fund") created in the above-referenced U.S. Securities and Exchange Commission's ("SEC" or "Commission") case against ICP Asset Management, LLC, ICP Securities, LLC, Institutional Credit Partners, LLC, Thomas C. Priore ("Priore") (collectively the "Defendants") and the relief defendants. The ICP Fair Fund was established on February 10, 2017 by Court Order to distribute the collected disgorgement, prejudgment interest, and civil penalties to investors that were harmed by fraudulent practices and misrepresentations made in connection with the collateralized debt obligations ("CDO") known as the Triaxx CDOs: Triaxx Prime CDO 2006-1, Ltd.; Triaxx Prime CDO 2006-2, Ltd.; Triaxx Prime CDO 2007-1, Ltd.; and Triaxx Funding High Grade I, Ltd. The ICP Fair Fund currently holds more than \$22 million and is held in an interest-bearing account at the U.S. Treasury's Bureau of Fiscal Service.

The SEC filed a complaint in the U.S. District Court for the Southern District of New York (the "Court") against the Defendants alleging they violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, by, among other things, performing improper transactions that defrauded the Triaxx CDOs, causing them to overpay for securities, pay improper fees, and ultimately lose millions of dollars. By Amended Complaint filed on June 30, 2011, the SEC further alleged that, in March 2010, Priore transferred assets into trusts that he had created during the SEC's investigations and the SEC named, as relief defendants, the trustees of those trusts. The litigation has since been resolved. By stipulation entered on September 6, 2012, the SEC dismissed its fraudulent conveyance claims (Counts X-XV of the Amended Complaint), resolving the charges with respect to the relief defendants. The Defendants consented to the entry of a Final Judgment that required them to collectively pay more than \$22 million.

This notice is being sent to investor participants in the Triaxx CDOs to notify you that you may be able to recover from the ICP Fair Fund for losses suffered as a result of your investment.

Who is Potentially Eligible?

The Commission has not yet determined how the ICP Fair Fund will be distributed and/or what economic losses will be compensable under a distribution plan. The pool of potentially eligible investors **may** include any person (which shall include natural persons and entities) who purchased an interest in



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ICP FAIR FUND

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Distribution Agent

the Triaxx CDOs, and believes they have suffered an economic loss as a result of that investment. In order to be considered for eligibility for a recovery from the ICP Fair Fund, the investor must prove that he, she, or it suffered an economic loss as a result of its investment in the Triaxx CDOs by providing documentation of the original investment(s), as well as all other cash flows relating to the investment (e.g., interest payments, premium payments, principal repayments, other recoveries received).

The Triaxx CDO investments include the following:

Triaxx Prime CDO 2006-1	Class A-1, A-2, B, X and C Notes
Triaxx Prime CDO 2006-2	Class A-1A, A-1B1, A-1B2, A-1BV, A-2, X and C Notes
Triaxx Prime CDO 2007-1	Class A-1T, A-1D, A-2, B, X and C Notes
Triaxx Funding High Grade I, Ltd. CDO	

How Will the Process Work?

In advance of preparing a plan of distribution for the ICP Fair Fund (the “Distribution Plan”), the Distribution Agent is inviting investors to provide information regarding their investments in the Triaxx CDOs. Using the information received from these submissions, the Distribution Agent, in consultation with the SEC and the economic expert retained by the SEC, will develop the Distribution Plan for the ICP Fair Fund. The Distribution Plan will be formulated in the interests of justice, with a goal of providing a fair and reasonable distribution of the ICP Fair Fund assets to those investors that suffered economic losses as a result of the Defendants’ misconduct as described in the complaints. The Distribution Plan will be filed with the Court for approval.

In order to be considered for a recovery from the ICP Fair Fund, please provide us with information regarding your investment(s) in the Triaxx CDOs. Please include information regarding all of your investments in the Triaxx CDOs. Your submission should include the following information and documentation:

1. A completed Claim Form, a copy of which is available on the ICP Fair Fund website at www.icpfairfund.com.
2. A detailed statement with supporting documentation, where relevant, pertaining to:
 - A. Background information about the investor entity, including information such as: the entity type (*i.e.*, whether it is a bank, pension plan, insurance company, hedge fund, or other type of financial institution), the domicile of the entity, and the nature of the entity’s business;
 - B. An explanation of the investment in the Triaxx CDOs generally, including factors such as: when the initial investment was made and the tranche, the total amount of the investment, how long the investor held the investment, whether the assets purchased were incorporated into another CDO, and the investor’s strategy in connection with the Triaxx CDO investments; and



UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

ICP FAIR FUND

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Distribution Agent

- C. The investor's role in the structured finance markets generally (*e.g.*, investor's percentage of total revenues earned from structured finance activities, investor's activity in the market, whether the investor or any of its subsidiaries or affiliates acted as a collateral manager, issuer, or arranger of structured finance products).
3. Disclosure of any cash flows relating to the Triaxx CDO investment received by the investor (including any parent entity, subsidiary or affiliate of the investor), and the dates and the amounts of such payments (*e.g.*, interest payments, premium payments, principal repayments);
4. Disclosure of any lawsuits or other proceedings the investor pursued to recover losses from its investments in the Triaxx CDOs and any payments received by the investor (including any parent entity, subsidiary, or affiliate of the investor) in connection with such lawsuits or proceedings; and
5. Disclosure of any other payments received by the investor (including any parent entity, subsidiary, or affiliate of the investor) that constitute a recovery for the investor's losses from its investments in the Triaxx CDOs (*e.g.*, insurance recoveries).

The submission should be submitted to the ICP Fair Fund via email at: info@icpfairfund.com. If you wish to mail your submission, please direct the submission to the ICP Fair Fund, 17 Technology Place, Suite 1, Syracuse, NY 13057. All submissions are to be made under penalty of perjury under the laws of the United States of America stating that the information supplied is true, correct, and complete, and that all documents submitted in support of the information are true and correct copies of what they purport to be.

What is the Deadline for Making a Submission?

Submissions must be postmarked or submitted no later than March 12, 2021. If you need assistance or if you have any questions regarding this notice, please contact the Distribution Agent at info@icpfairfund.com. You may also visit www.icpfairfund.com for additional information regarding the ICP Fair Fund.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

ICP ASSET MANAGEMENT, LLC,
ICP SECURITIES, LLC,
INSTITUTIONAL CREDIT PARTNERS, LLC, and
THOMAS C. PRIORE,

Defendants,

-and-

THOMAS C. PRIORE,
LORI A. PRIORE, and
BERTRAND H. SMYERS,

Relief Defendants.

Case No.:
10-cv-4791-LAK-JCF

(Proposed) Order Approving Distribution Plan

The Court having reviewed the Motion of Plaintiff Securities and Exchange Commission (the “SEC”) for an Order approving the SEC’s proposed distribution plan for the ICP Fair Fund (the “Plan”), the accompanying Memorandum in Support, the Declaration of the Distribution Agent, and the Plan;

AND the SEC having represented that the Motion with supporting documents has been sent to the last known address and/or email of all entities that submitted claims to the Court-appointed Distribution Agent pursuant to the claims process developed in accordance with this Court’s Order (ECF No. 273), publicly posted on the SEC public webpage for this matter and the distribution website, and served as stated in the certificate of service;

AND having considered all arguments presented and for good cause shown;

IT IS HEREBY ORDERED that:

1. The Plan attached hereto is hereby approved; and
2. The Plan shall govern the administration and distribution of the Fair Fund previously established by Order entered February 10, 2017 (ECF No. 260).

Dated: _____, 2023

Lewis A. Kaplan
U.S. District Court Judge

Exhibit 1 (Distribution Plan)

Exhibit 1
(Distribution Plan)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,**

v.

**ICP ASSET MANAGEMENT, LLC,
ICP SECURITIES, LLC,
INSTITUTIONAL CREDIT PARTNERS, LLC, and
THOMAS C. PRIORE,**

Defendants,

-and-

**THOMAS C. PRIORE,
LORI A. PRIORE, and
BERTRAND H. SMYERS,**

Relief Defendants.

**Case No.: 10-cv-4791-LAK-
JCF**

[Proposed] Distribution Plan

I. OVERVIEW

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties collected on the final judgments entered against ICP Asset Management, LLC (“ICP”), ICP Securities, LLC (“ICPS”), Institutional Credit Partners, LLC (“ICP Holdco”), and Thomas C. Priore (“Priore”) (collectively, the “Defendants”), and Relief Defendants Thomas C. Priore, Lori A. Priore, and Bertrand H. Smyers (collectively, the “Relief Defendants”) in this action.

2. As described more specifically below, and using the methodology detailed in the Plan of Allocation attached as Exhibit A (the “Plan of Allocation”), the Plan seeks to compensate investors for losses suffered due to the misconduct described in the Complaint in investments in certain collateralized debt obligations: Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd. (the “Triaxx CDOs”) between September 1, 2006 and June 21, 2010, inclusive (the “Relevant Period”), as well as in credit default swaps entered into with issuers of the Triaxx CDOs (collectively, the “Securities”).

3. The SEC has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over the implementation of the Plan.

II. BACKGROUND

4. By Complaint filed on June 21, 2010 and amended on June 30, 2011,¹ the SEC charged the Defendants with repeated violations of the federal securities laws. Beginning in 2006, ICP was the asset manager of the Triaxx CDOs, four multi-billion-dollar collateralized debt obligations. The SEC alleged that, starting in 2007, as the mortgage markets deteriorated, the Defendants engaged in a range of improper transactions that defrauded the Triaxx CDOs of tens of millions of dollars and placed them at risk of substantial additional losses in the future. The SEC further alleged that, in March 2010, after the SEC staff indicated that it intended to recommend an enforcement action, Priore transferred certain of his assets into trusts that he had created during the SEC's investigations. These trusts were named as Relief Defendants in the SEC's litigation.

5. The SEC charged the Defendants, variously, with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5, Section 15(c)(1)(A) of the Exchange Act, 15 U.S.C. § 78o(c)(1)(A), and Exchange Act Rule 10b-3, 17 C.F.R. § 240.10b-3, Sections 206(1), 206(2), 206(3) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(3), and 80b-6(4), and Advisers Act Rule 206(4)-8, 17 C.F.R. § 275.206(4)-8, and Section 204 of the Advisers Act, 15 U.S.C. § 80b-4, and Advisers Act Rule 204-2 and 206(4)-7, 17 C.F.R. §§ 275.204-2 and 275.206(4)-7.

6. The litigation has since been resolved. By stipulation entered on September 6, 2012, the SEC dismissed its fraudulent conveyance claims (Counts X-XV of the Amended Complaint), thereby resolving the charges with respect to the Relief Defendants. By final judgment entered by consent on September 12, 2012 against the Defendants (the "Final Judgment"),² the Court ordered, in relevant part:

- a. ICP Holdco and ICP, jointly and severally, to pay to the SEC disgorgement of \$13,916,005 and prejudgment interest of \$3,709,028, for a total of \$17,625,033;
- b. ICP to pay to the SEC a civil penalty of \$650,000;
- c. ICPS to pay to the SEC disgorgement of \$1,637,581, prejudgment interest of \$301,893, and a civil penalty of \$1,939,474; and
- d. Priore to pay to the SEC disgorgement of \$797,337, prejudgment interest of \$215,045, and a civil penalty of \$487,618 pursuant to a payment schedule.

¹ ECF Nos. 1, 54.

² ECF No. 226.

7. By Order entered February 10, 2017, the Court established the Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so that collected civil penalties along with collected disgorgement and prejudgment interest can be distributed to harmed investors; appointed Miller Kaplan Arase LLP (“Miller Kaplan”), as the tax administrator for the Fair Fund (the “Tax Administrator”); and appointed Nichola L. Timmons, an SEC employee, as the Fund Administrator for the Fair Fund (the “Fund Administrator”).³ The Court further ordered that the Fund Administrator, among other things, work to develop a distribution plan and retain experts as necessary in order to assist with the development of a distribution plan, whose fees will be paid by the Fair Fund.

8. The Fund Administrator retained Securities Litigation and Consulting Group (“SLCG”) as an expert to assist with the development of a distribution plan.

9. By Order entered July 5, 2017, the Court authorized the SEC to pay future tax obligations and the fees and expenses of the Tax Administrator and SLCG from the Fair Fund without further Court Order.⁴

10. By Order entered August 17, 2020, the Court appointed RCB Fund Services LLC as the Distribution Agent for the Fair Fund (the “Distribution Agent”), discharged the Fund Administrator, and authorized the SEC to pay the fees and expenses of the Distribution Agent from the Fair Fund without further Court Order (the “Appointment Order”).⁵

11. The SEC has collected over \$22 million on the Final Judgment, which comprises the Fair Fund. The Fair Fund is held in an SEC-designated account at the United States Department of the Treasury (“Treasury”). Any additional collections from the Defendants; accrued interest; and funds directed to the Fair Fund by Court or SEC Order, or otherwise⁶ shall be added to, and become a part of, the Fair Fund. For purposes of the Plan, additional collections from the Defendants will be applied first to ordered disgorgement until satisfied, then ordered civil penalties, prejudgment interest, and post-judgment interest, in that order.

III. THE CLAIMS PROCESS

12. By the Appointment Order, the Court authorized the Distribution Agent, in advance of proposing a distribution plan for Court approval, to work with the SEC and SLCG to provide notice to investors who may be eligible for a recovery from the Fair Fund,

³ ECF No. 260; ECF No. 254 (proposed order subsequently approved). The Order, comprised of an endorsement at the top of the first page of the filed Notice of Motion, references both Damasco & Associates LLP (“Damasco”) and Miller Kaplan. As of October 1, 2016, Damasco became part of Miller Kaplan.

⁴ ECF No. 265 (Docket entry only, no attached Order), *see* ECF No. 261-1 for the approved order.

⁵ ECF No. 273.

⁶ The SEC anticipates moving the Court for the addition of collections in the related civil action, *SEC v. Abdullah*, Civ. Act. No. 10-4957 (LAK) to the Fair Fund.

solicit claims on a Claim Form detailing their investments made in connection with the Securities, and finalize a distribution plan based on, among other things, submitted claims.⁷

13. In accordance with the Appointment Order, the Distribution Agent has completed the claims process. Based on the submissions during the claims process, the Distribution Agent, in consultation with SLCG and the SEC staff, has determined this Plan, including the Plan of Allocation, fairly and reasonably compensates investors for losses suffered due to the misconduct described in the Complaint in connection with investments in the Securities during the Relevant Period, including Securities received, or cash settlements made, during the Relevant Period pursuant to swaps entered into with issuers of the Securities prior to the Relevant Period.

IV. DEFINITIONS

As used in the Plan, the following definitions will apply:

14. “**Administrative Costs**” shall mean any costs and expenses of distributing the Fair Fund and administering the Plan, including without limitation the fees and expenses of the Tax Administrator, the Distribution Agent, and SLCG; tax obligations; and investment and banking costs.

15. “**Claimant**” shall mean a Person, or their lawful successors, who submitted a claim during the Claims Process.

16. “**Claims Process**” means the process followed by the Distribution Agent in accordance with the Appointment Order and as further described in the Declaration of Distribution Agent in Support of Motion for an Order Approving a Distribution Plan filed simultaneously with the Plan.

17. “**Determination Notice**” means the written notice sent by the Distribution Agent to all Claimants after the Third-Party Review, setting forth the Distribution Agent’s determination as to eligibility and, with respect to Eligible Claimants, the Eligible Loss Amount. The Determination Notice constitutes the Distribution Agent’s final ruling regarding the sufficiency of the claim.

18. “**Distribution Payment**” means the payment from the Fair Fund to a Payee, as calculated in accordance with the Plan of Allocation.

19. “**Eligible Claimant**” means a Claimant who is not an Excluded Party, and who has suffered an Eligible Loss Amount as calculated in accordance with the Plan of Allocation.

20. “**Eligible Loss Amount**” means the amount of loss suffered by an Eligible Claimant calculated in accordance with the Plan of Allocation. Securities received, or cash

⁷ ECF No. 273.

settlements made, during the Relevant Period pursuant to swaps entered into with issuers of the Securities prior to the Relevant Period will be included in the Eligible Loss Amount.

21. **“Excluded Party”** shall mean
- a. The Defendants and Relief Defendants in the captioned action or the related SEC action, *SEC v. Amer Abdullah*, 10-cv-4957-LAK (S.D.N.Y.) (the “Abdullah Action”);
 - b. Present or former officers or directors of the entities described in 21.a., or their assigns, heirs, distributees, spouses, parents, dependent children or controlled entities;
 - c. Any employee or former employee of the Defendants or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct alleged in the Complaint or their assigns, heirs, distributees, spouses, parents, dependent children or controlled entities;
 - d. Any Person who, prior to Distribution Payment determinations under the Plan, has been convicted of criminal charges related to the conduct alleged in the Complaint or the Abdullah Action, or their assigns, heirs, distributees, spouses, parents, dependent children or controlled entities;
 - e. The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent;
 - f. SLCG, its employees, and those Persons assisting SLCG in its role as the Distribution Agent; and
 - g. Any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

The Distribution Agent will require any claimant who suffered an Eligible Loss Amount under this Plan to certify that they are not an Excluded Party. All Excluded Parties will be deemed ineligible to participate in the distribution of the Fair Fund.

22. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in the Complaint. Any additional collections from the Defendants; accrued interest; and funds directed to the Fair Fund by Court or SEC Order, or otherwise; shall be added to, and become a part of, the Fair Fund.

23. **“Net Available Fair Fund”** means the Fair Fund less Administrative Costs.

24. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00 (the “Minimum Distribution Amount”), as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

25. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

26. **“Plan of Allocation”** means the methodology used by the Distribution Agent to calculate an Eligible Claimant’s Eligible Loss Amount and to determine the amount of any Distribution Payment. The Plan of Allocation is attached as Exhibit A.

27. **“Relevant Period”** means September 1, 2006 through June 21, 2010, inclusive.

28. **“Securities”** refers to the following collateralized debt obligations: Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd., as well as credit default swaps entered into with issuers of the foregoing.

V. TAX COMPLIANCE

29. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund as further set forth in this Court’s prior Orders.⁸

30. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under 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 QSF 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. Requesting funds necessary for the timely payment of all applicable taxes, the 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 imposed on distributions from the Fair Fund.

⁸ ECF Nos. 260, 265.

VI. DISTRIBUTION AGENT

31. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to maintain the database established during the Claims Process; maintaining the website and staffing a call center to address inquiries regarding the Plan; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); assisting with the disbursement of the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and causing payments to be reissued, when possible.

32. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the SEC staff. If a change is deemed to be material by SEC staff, the SEC will seek Court approval of any amendment(s) to the Plan amendment prior to implementation.

33. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the SEC staff.

34. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone except the SEC on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Plan. No Claimant will have a claim against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Fair Fund. Claimants will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Plan.

35. The Distribution Agent is authorized to enter into agreements with third-parties as may be appropriate or necessary in the administration of the Fair Fund, provided such third-parties are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the third-parties shall be deemed to be agents of the Distribution Agent under this Plan.

VII. ADMINISTRATION OF THE FAIR FUND

The Execution of the Claims Process and Communication with Claimants

36. The Distribution Agent has:

a. in accordance with the Appointment Order, completed the Claims Process and, with the SEC staff and SLCG, finalized the Plan based on, among other things, submitted claims;

b. established and currently maintains a website dedicated to the Fair Fund at www.ICPFairFund.com to make available in downloadable form, notices and Court

Orders relevant to the distribution, and such other information that the Distribution Agent believes will be beneficial to Claimants;

c. established and currently maintains a traditional mailing address and an email mailing address that is listed on all correspondence from the Distribution Agent to Claimants, as well as on the Fair Fund's website;

d. established and currently maintains a toll-free telephone number for Claimants to call and speak to a live representative of the Distribution Agent during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund;

e. established and currently maintains a case specific database of all Claimants based upon information provided to, and obtained by, the Distribution Agent through the Claims Process and otherwise; and

f. responded to, and continues to respond to, inquiries related to the ICP Fair Fund.

37. There will be no additional claims solicited in connection with the Plan; the Distribution Agent, in consultation with SLCG and the SEC staff, will identify Eligible Claimants and Payees based on information already obtained by the Distribution Agent during the Claims Process.

Third-Party Review

38. After the Distribution Agent has completed the process of analyzing the claims and determining claim amounts in accordance with the Plan, and prior to the issuance of Determination Notices and the distribution of any funds, the Distribution Agent will engage an independent, third-party firm, not unacceptable to SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan of Allocation. The Distribution Agent will communicate the results of the review to SEC staff together with any written analysis or reports related to the review, and, upon request, will make the firm available to the SEC staff to respond to questions concerning the review.

Determination Notice

39. Upon completion of the Third-Party Review, the Distribution Agent will send Determination Notices to all Claimants.

Eligible Loss Amount Determination

40. The Distribution Agent may consider disputes of the Eligible Loss Amount calculation, if presented in writing to the Distribution Agent within twenty (20) days of the date of the Determination Notice. The Distribution Agent will consult with the SEC staff,

SLCG, and the third-party review firm (*see* paragraph 38), as appropriate. The Distribution Agent will respond to the dispute, in writing within twenty (20) days of receiving a dispute of its determination, which will constitute the Distribution Agent's final ruling regarding the loss calculations for the claim.

Distribution Methodology

41. Any Claimant who is not an Excluded Party, and who has suffered an Eligible Loss Amount as calculated in accordance with the Plan of Allocation, will be deemed an Eligible Claimant.

42. The Distribution Agent will calculate each Eligible Claimant's Eligible Loss Amount in accordance with the Plan of Allocation. All Eligible Claimants who are determined to receive a Distribution Payment will be deemed a Payee.

Establishment of a Reserve

43. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs (the "Reserve").

44. After all disbursements and Administrative Costs are paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 59 below.

Preparation of the Payment File

45. Within sixty (60) days following the date of the Determination Notices described above, paragraph 39, the Distribution Agent will compile and send to the SEC staff the Payee information, including the name, address, calculated Eligible Loss Amount, tax withholding (if any), and the amount of the Distribution Payment for all Payees (the "Payee List"). The Distribution Agent will also provide a Declaration to the SEC staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees' names, addresses, Eligible Loss Amount, tax withholding amount (if applicable), and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) includes the percentage of the Payee's Eligible Loss Amount being compensated by the disbursement from the Fair Fund, and if applicable, the total percentage including all prior disbursements; (e) includes the total amount of funds to be disbursed; and (f) provides all information necessary to make a payment to each Payee.

Distribution of the Fair Fund

46. Upon the SEC staff's receipt, review, and acceptance of the Payee List and Declaration from the Distribution Agent, the SEC staff will petition the Court for authority to disburse funds from the Net Available Fair Fund in accordance with the Payee List. The Payee List shall, upon request, be made available to the Court under seal. Treasury will mail checks or electronically transfer funds to each Payee in accordance with the Court's order.

47. All checks will bear a stale date of one (1) year from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the issuing entity will be instructed to stop payment on those checks. A Payee'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 Fair Fund, except as provided in paragraph 53.

48. All Distribution Payments will 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 Payee and that the Payee 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 and cannot be reissued after one (1) year from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and SEC staff for review and approval.

49. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

50. Distribution Payments must be made by check or electronic payment payable to the Payee (the beneficial account owner). Any other payment arrangement must be discussed with the Distribution Agent in consultation with the SEC staff and must be authorized by the Payee.

51. The submission of a Claim Form and the receipt and acceptance of a Distribution Payment by a Payee is not intended to be a release of a Payee's rights and claims against any Defendant or Relief Defendant.

Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

52. The Distribution Agent shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned as "undeliverable." If new address information becomes available, the Distribution Agent, working with the SEC staff, will cause the distribution check to be sent to the new address. If new address information is not available after a diligent search (and in no event no later than one (1) year after the issuance of the original check without the approval of the SEC staff) or if the distribution check is returned again, the check shall be voided and payment stopped on the check. If the Distribution Agent is unable to find a Payee's correct address, the Distribution Agent, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

53. The Distribution Agent, working with the SEC staff, will cause checks or electronic payments to be reissued to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent, working with the SEC staff, will cause an appropriately redrawn Distribution Payment to issue to the requesting party. Reissued checks will be void at the later of one (1) year from the issuance of the original check or one (1) year from the reissuance, and in no event will a check be reissued after one (1) year from the date of the original issuance without the approval of SEC staff.

54. The Distribution Agent will work with the SEC staff and Treasury to maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent, working with the SEC staff, is responsible for researching and reconciling errors and assisting with the reissuance of payments when possible. The Distribution Agent, working with the SEC staff, is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

55. The Distribution Agent will make reasonable efforts to contact Payees who have failed to negotiate and/or receive their Distribution Payment and take appropriate action to follow up on the status of uncashed checks or undelivered payments at the request of SEC staff. The Distribution Agent, working with the SEC staff, will direct the reissuance of such Distribution Payments subject to the time limits detailed herein.

Administrative Costs

56. All Administrative Costs shall be paid from the Fair Fund and shall be reflected in the final accounting referenced below.

57. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as fees for the return of a payment, may reduce the Payee's Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Disposition of Undistributed Funds

58. If funds remain following the initial distribution, the Distribution Agent, in consultation with the SEC staff, may seek subsequent distribution(s) of any remaining funds. All subsequent distributions shall be made consistent with this Plan and pursuant to the Court's order.

59. A residual will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks that were not delivered or were returned to the SEC, and tax refunds received due to the Fair Fund’s overpayment of taxes or for waiver of IRS penalties.

60. Once the Distribution Agent, in consultation with the SEC staff, deems further distribution of the Fair Fund to investors infeasible, the Distribution Agent will direct any uncashed Distribution Payments to be voided.

61. All funds remaining in the Residual that are infeasible to distribute to investors will be held pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting, which will include a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).⁹ If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.¹⁰

Filing of Reports and Accountings

62. The Distribution Agent shall report to the SEC and the Court in accordance with the Appointment Order.

63. Upon completion of all distributions to Payees and payment of all Administrative Costs pursuant to the procedures described above, the Distribution Agent will submit to the SEC staff a final accounting, on a standardized form provided by the SEC staff. The Distribution Agent will also submit a report to the SEC staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the SEC staff. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Sections 21(d)(3), (5), and (7) of the Exchange Act, 15 U.S.C. § 78u(d)(3), (5), and (7).

Receipt of Additional Funds

⁹ 15 U.S.C. § § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

¹⁰ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

64. Should any additional funds be received pursuant to SEC or Court order, agreement, or otherwise, prior to the Court's termination of the Fair Fund, such funds will be added to, and become a part of, the Fair Fund and distributed, if feasible, in accordance with the Plan.

Wind-down and Document Retention

65. The Distribution Agent will shut down the website, P.O. Box, and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the completion of the final distribution under this Plan, or at such earlier time as the Distribution Agent determines with the concurrence of the SEC staff.

66. The Distribution Agent will retain all materials submitted by Claimants in either paper or electronic form for a period of six (6) years from the date of approval of a final fund accounting. Materials maintained in electronic form must be accessible and readable for the duration of retention. Pursuant to the SEC staff's direction, the Distribution Agent will either turn over to the SEC or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

67. Once the SEC staff has reviewed and accepted the final accounting, the SEC will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

68. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:

- a. A final report and accounting has been submitted to and approved by the Court;
- b. All Administrative Costs have been paid; and
- c. The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).¹¹

69. Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

¹¹ See footnote 9.

Exhibit A

Plan of Allocation

This Plan of Allocation is designed to compensate investors for losses due to the misconduct described in the Complaint in *SEC v. ICP Asset Management, LLC, et al.*, 10-cv-04791 (S.D.N.Y.) (the “SEC Action”) in investments in the Triaxx Prime CDO 2006-1, Triaxx Prime CDO 2006-2, Triaxx Prime CDO 2007-1, and Triaxx Funding High Grade I, Ltd. (the “Triaxx CDOs”) as well as credit default swaps entered into with the issuers of the Triaxx CDOs (collectively, the “Securities”), between September 1, 2006 and June 21, 2010, inclusive (the “Relevant Period”); and Securities received, or cash settlements made, during the Relevant Period pursuant to swaps entered into with issuers of the Securities prior to the Relevant Period. Investors who did not suffer losses caused by misconduct described in the SEC Action related to investments in the Securities during the Relevant Period; Securities received, or cash settlements made, during the Relevant Period pursuant to swaps entered into with issuers of the Securities prior to the Relevant Period; or who are Excluded Parties¹² are ineligible to recover under this Plan.

The Distribution Agent will calculate “Eligible Loss Amounts” as follows:

- a. With respect to investments held in the Triaxx CDOs during the Relevant Period, the difference between the total purchase cost of the investment and any recovery on those investments, including, without limitation, sale proceeds, interest payments, and third-party recoveries; and
- b. With respect to counterparty losses on credit default swaps entered into with issuers of Triaxx CDOs the difference between the amount paid to purchase the Securities pursuant to the credit default swaps or cash payments made to offset losses investors in the Securities otherwise would have borne in connection with investments in the Securities during the Relevant Period; and recoveries related to those payments, including premiums, sales proceeds, interest received, and third-party recoveries.

Additional Provisions

Acquisitions: The receipt or grant of the Securities to the Claimant by gift, devise, inheritance, or operation of law during the Relevant Period is not considered an eligible purchase if the original purchase did not occur during the Relevant Period. Such Securities will be excluded from the calculation of the Eligible Loss Amount. Notwithstanding, Securities received, or cash settlements made, during the Relevant Period pursuant to swaps

¹² All capitalized terms used herein but not defined are used as defined in the Plan.

entered into with issuers of the Securities prior to the Relevant Period, will be included in the Eligible Loss Amount.

Eligible Loss Amount: The amount of loss suffered by an Eligible Claimant calculated in accordance with the Plan of Allocation. Securities received, or cash settlements made, during the Relevant Period pursuant to swaps entered into with issuers of the Securities prior to the Relevant Period, will be included in the Eligible Loss Amount.

Distribution Amount: If the Net Available Fair Fund is equal to or exceeds the sum of the Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its Eligible Loss Amount, plus "Reasonable Interest" if applicable. If the Net Available Fair Fund is less than the sum of the Eligible Loss Amounts of all Eligible Claimants, each Eligible Claimant's distribution amount will equal his, her or its "*Pro Rata* Percent" of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the "Minimum Distribution Amount."

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Eligible Loss Amounts in full, the Distribution Agent, in consultation with the SEC staff, may include reasonable interest in the distribution amount to compensate Eligible Claimants for the time value of their Eligible Loss Amounts. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant's Reasonable Interest amount will be equal to his, her or its *Pro Rata* Percent of the excess funds.

Pro Rata Percent: A *Pro Rata* Percent computation is intended to measure Eligible Claimants' Eligible Loss Amounts against one another. The Distribution Agent shall determine each Eligible Claimant's *Pro Rata* Percent as the ratio of his, her, or its Eligible Loss Amount to the sum of Eligible Loss Amounts of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her, or its distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount (inclusive of Reasonable Interest, if any) equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: A Payee will receive a Distribution Payment equal to either his, her, or its Eligible Loss Amount plus Reasonable Interest, if any, or its *Pro Rata* Percent, depending on whether the Net Available Fair Fund is greater than or lesser than the sum of the Eligible Loss Amounts of all Eligible Claimants. In no event will a Payee receive a Distribution Payment from Fair Fund of more than his, her, or its Eligible Loss Amount, plus Reasonable Interest, if applicable.