

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92951 / September 13, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. IA-5860 / September 13, 2021

ADMINISTRATIVE PROCEEDING
File No. 3- 20541

In the Matter of

ROTHSCHILD
INVESTMENT
CORPORATION

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Rothschild Investment Corporation (“Rothschild” 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 Section 15(b) of the Securities Exchange Act of 1934 and 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 finds¹ that:

Summary

1. Rothschild, a dually-registered investment adviser and broker-dealer, breached its fiduciary duty to advisory clients by failing to disclose two types of compensation it received based on its advisory clients' investments. Since at least January 2014, Rothschild received fees as a result of client investments in certain mutual fund shares, including: (1) fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees"); and (2) revenue sharing payments from an unaffiliated clearing broker ("Clearing Broker") as a result of sweeping Rothschild's advisory clients' cash into certain money market mutual funds ("money market funds"). The investments that resulted in 12b-1 fees or revenue sharing payments were generally more expensive than lower-cost options available to clients, including lower-cost share classes of the same mutual funds that did not result in any 12b-1 fees or revenue sharing payments. Rothschild did not provide full and fair disclosure of these fees and revenue sharing payments and the related conflicts of interest. With respect to the 12b-1 fees, Rothschild, although eligible to do so, did not self-report to the Commission pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative ("SCSD Initiative").²

2. Rothschild also breached its duty to seek best execution by causing advisory clients to invest in more expensive share classes of mutual funds or share classes of cash sweep money market funds that paid greater 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. In addition, while Rothschild determined that certain money market funds were appropriate cash sweep vehicles for its advisory clients, it failed to consider alternative funds with similar strategies that were offered by the Clearing Broker and had lower costs and higher yields.

3. Lastly, Rothschild 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 and cash sweep money market fund selection practices and its disclosure of the associated conflicts of interest.

Respondent

4. Respondent Rothschild Investment Corporation, incorporated in Delaware and headquartered in Chicago, Illinois, has been registered with the Commission as an investment

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

² See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, *Share Class Selection Disclosure Initiative*, <https://www.sec.gov/enforce/announcement/scsd-initiative> (last modified Feb. 12, 2018).

adviser and a broker-dealer since 1971. In its Form ADV dated March 30, 2021, Rothschild reported that it had approximately \$1.6 billion in regulatory assets under management.

Mutual Fund Share Classes

5. Mutual funds typically offer investors 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 the share classes is the fee structures.

6. For example, some mutual fund share classes charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund’s total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund’s assets on an ongoing basis and paid to the fund’s distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

7. Many mutual funds also offer share classes that do not charge 12b-1 fees (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 charges 12b-1 fees. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

Conflicts of Interest Regarding 12b-1 Fees

8. From at least January 2014 through May 2018, Rothschild advised clients to purchase or hold⁴ mutual fund share classes that charged 12b-1 fees when lower-cost share classes of those same funds were often available to those clients.

9. As an investment adviser, Rothschild 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 the advisory relationship and how those conflicts could affect the advice Rothschild provided its clients. To meet this fiduciary obligation, Rothschild 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 Rothschild’s advice and have an informed basis on which to consent to or reject the conflicts.

³ Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry, such as “Class F2,” “Class Y” and “Class Z” shares. As used in this Order, the term “Class I shares” refers generically to share classes that do not charge 12b-1 fees.

⁴ In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares without cost or tax consequences to the client.

10. Rothschild's Form ADV Part 2A ("Brochure") contained the following disclosure since at least January 2014:

Management personnel and other related persons of our firm are licensed as registered representatives of a broker-dealer and/or licensed as insurance brokers. In their separate capacities, these individuals are able to implement investment recommendations for advisory clients for separate and typical compensation (*i.e.*, commissions, 12b-1 fees or other sales-related forms of compensation). This presents a conflict of interest to the extent that these individuals recommend that a client invest in a security which results in a commission being paid to Rothschild.

11. Rothschild did not adequately disclose, in its Brochure or otherwise, all material facts regarding the conflict of interest that arose when it invested advisory clients in a share class that would generate 12b-1 fee revenue for Rothschild while a share class of the same fund was available that would not provide Rothschild with that additional compensation. Rothschild failed to disclose that it would select more expensive mutual fund share classes even when lower-cost share classes were available to its clients.

12. In May 2018, prior to the Commission investigation, Rothschild began converting existing clients' holdings to share classes or funds that did not pay 12b-1 fees or, for clients who wanted to maintain the same investments, stopped collecting advisory fees on those investments. According to Rothschild, beginning in June 2018, the firm reimbursed clients and former clients for 12b-1 fees it collected since January 1, 2014.

Conflicts of Interest Regarding Cash Sweep Revenue Sharing

13. Since at least January 2014, Rothschild recommended that clients choose certain money market funds as sweep account products to hold uninvested cash. A sweep account is a money market mutual fund or bank account used by broker-dealers to hold uninvested cash (*e.g.*, incoming cash deposits, dividends, or certain investment returns) until the investor or its adviser decides how to invest the money ("Sweep Account"). A money market fund is a type of mutual fund registered under the Investment Company Act and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short term, highly liquid securities with limited credit risk, and are frequently used in Sweep Accounts. The investment yield and expense ratio of a money market fund will differ from fund to fund.

14. Since at least January 1, 2014, Clearing Broker agreed to share with Rothschild a portion of the revenue Clearing Broker received in connection with certain money market funds offered to Sweep Accounts. Under this arrangement, Clearing Broker provided Rothschild with a list of money market funds offered as Sweep Account options for Rothschild's advisory clients. The amount of revenue sharing Rothschild received varied depending on the money market fund recommended by Rothschild and selected by advisory clients.

15. Rothschild had a conflict of interest when recommending certain money market funds to its clients: it had an incentive to recommend Sweep Account options that resulted in it

receiving revenue sharing as opposed to options that did not or paid less revenue sharing. Moreover, the money market funds available on Clearing Broker's platform that resulted in Rothschild receiving the most revenue sharing generally charged higher fees and returned lower investment yields to clients. Conversely, the money market funds available on Clearing Broker's platform that resulted in no or lower revenue sharing to Rothschild generally charged lower fees and returned higher investment yields to clients.

16. Since at least January 1, 2014, more than 85% of Rothschild's advisory clients had their uninvested cash in money market funds that paid revenue sharing. Rothschild's account opening paperwork did not list any specific Sweep Account options for advisory clients to allocate uninvested cash. Instead, Rothschild's investment adviser representatives typically recommended money market funds that resulted in the highest revenue sharing without disclosing to clients that Rothschild would receive revenue sharing or that there were lower-cost and higher-yielding money market fund options available.

17. Rothschild also received different levels of revenue sharing from Clearing Broker based on client assets invested in two different share classes of the same money market fund. Rothschild's revenue sharing contract with Clearing Broker paid Rothschild more revenue sharing for the higher-cost share class than it did for the lower-cost share class. The higher-cost share class generally resulted in lower yields for Rothschild clients.

18. From January 2014 to March 2019, Rothschild did not disclose in its Forms ADV or otherwise that it received revenue sharing from Clearing Broker on clients' Sweep Account money market investments. In March 2019, Rothschild added a disclosure to its Brochure stating that it received "revenue sharing payments from certain mutual funds held by our clients." The disclosure also stated that "[t]he receipt of this revenue creates a potential conflict of interest to Rothschild to use custodians and investment products that generate shareholder service fees, and transfer fees, 12b-1 fees and other compensation to Rothschild." This disclosure was not sufficiently specific so that clients could understand the conflicts of interest and consent thereto. For example, it did not disclose that this compensation was based on clients' Sweep Account assets or that the money market funds that paid more revenue sharing generally had higher fees and (at times) lower performance than other available options, including some money market funds for which a lower-cost share class of the same fund was available.

Duty of Care Failures

19. An investment adviser's fiduciary duty also includes a duty of care. To fulfill this obligation, an adviser, among other things, must provide investment advice in the best interest of its client based on the client's objectives and seek best execution for client transactions.⁵

20. By causing certain advisory clients to invest in share classes of mutual funds that charged 12b-1 fees or share classes of money market funds that resulted in higher revenue sharing

⁵ 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).

payments from Clearing Broker 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, Rothschild violated its duty to seek best execution for those transactions.

21. Rothschild also did not fulfill its duty of care obligations when it advised clients to invest in money market funds without undertaking any analysis to determine whether the money market funds and share classes it used as cash sweep vehicles were in the best interests of its advisory clients.

Compliance Deficiencies

22. During the relevant periods of conduct described above, Rothschild 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 mutual fund share class and money market fund selection practices, and related disclosures.

Violations

23. As a result of the conduct described above, Respondent willfully⁶ 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)).

24. 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

25. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles, does not exceed Respondent’s net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors,

⁶ “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act and Section 15(b) of the Exchange 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).

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 United States Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Rothschild's Remedial Efforts

26. Although Rothschild did not self-report pursuant to the SCSD Initiative even though it was eligible to do so, in determining to accept the Offer, the Commission considered other remedial acts promptly undertaken by Rothschild, including efforts beginning in May 2018 to address share class issues.

Undertakings

27. Respondent will do the following:

Steps Taken to Date

- a. Respondent has certified that it has reviewed and corrected as necessary all relevant disclosure documents concerning 12b-1 fees.
- b. Respondent has certified that it has evaluated whether existing clients should be moved to a lower-cost share class or fund and has moved clients as necessary.
- c. In determining whether to accept the Offer, the Commission has considered the undertakings set forth in paragraphs 27.a through 27.b above.

Steps to be Taken

- d. Within thirty (30) days of the entry of this Order, Respondent shall 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 in connection with mutual fund and money market fund selection and revenue sharing.
- e. Within thirty (30) days of the entry of this Order, Respondent shall evaluate and update (if necessary) the Sweep Account options that are in the best interests of advisory clients.
- f. Within thirty (30) days of the entry of this Order, Respondent shall review and correct as necessary all relevant disclosures concerning the selection of money market funds and revenue sharing.
- g. Within thirty (30) days of the entry of this Order, Respondent shall notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices detailed above (hereinafter, "affected advisory clients"))

of the settlement terms of this Order by sending a copy of this Order to each affected advisory client 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.

h. Within forty (40) days of the entry of this Order, Respondent shall certify, in writing, compliance with the undertaking(s) set forth in paragraphs 27.d through 27.g 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 Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, 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.

i. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings set forth in paragraphs 27.d through 27.h above. 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 Section 15(b) of the Exchange Act and 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 \$2,471,667.00 as follows:

(i) Respondent shall pay disgorgement of \$1,885,360.59, prejudgment interest of \$186,306.41, and a civil penalty of \$400,000.00, consistent with the provisions of this Subsection C.

(ii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a fair fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected advisory clients. Amounts ordered to be paid as civil 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.

(iii) Rothschild shall make payments in the following installments: (1) \$1,043,153.21 shall be paid within ten (10) days of the entry of this Order and (2) the remaining amount of disgorgement, prejudgment interest, and civil penalties, and post-order interest (which accrues pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717), less monies already distributed to affected advisory clients for 12b-1 fees paid by those clients, shall be paid within ninety (90) days of the entry of this Order. Rothschild shall deposit these installments (the "Fair Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Rothschild shall provide evidence of such deposits in a form acceptable to the Commission staff. Payments shall be applied first to post-order interest. Prior to making the final installment set forth herein, Rothschild shall contact the staff of the Commission for the amount due. If Rothschild fails to make any payment by the date and/or in the amount according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable to the Commission immediately at the discretion of the staff of the Commission without further application to the Commission.

(iv) Respondent shall be responsible for administering the Fair Fund and may hire a professional at its own cost 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 advisory client an amount representing the financial harm during each relevant period by the practices discussed above, less any monies already distributed to each affected

advisory client, 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. If there are insufficient funds to fully compensate affected advisory clients for these amounts, the Fair Fund will be distributed to affected advisory clients in a *pro rata* fashion. If sufficient funds are available, reasonable interest will be paid on such amounts. The Calculation shall be subject to a *de minimis* threshold that is approved by the Commission staff. No portion of the Fair Fund shall be paid to any affected advisory client account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vi) Respondent shall, within ninety (90) 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 thirty (30) 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 advisory client. The Payment File should identify, at a minimum: (1) the name of each affected advisory client; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid, if applicable.

(viii) Respondent shall disburse all amounts payable to affected advisory clients within ninety (90) 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[s] and the amounts paid in the 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 advisory client or a beneficial owner of an affected advisory client’s account or any other factors

beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once 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 Rothschild Investment Corporation 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 Jeffrey Shank, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, 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 agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding payments to affected advisory clients, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act. Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (xi) Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected advisory clients, 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 the 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 a 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 for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected advisory clients in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent and the file number of these proceedings to Jeffrey Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, 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 27.d through 27.h above.

By the Commission.

Vanessa A. Countryman
Secretary