

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6434 / September 26, 2023**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21724**

**In the Matter of**

**ASSETMARK, INC.**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 203(e) AND  
203(k) OF THE INVESTMENT ADVISERS  
ACT OF 1940, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against AssetMark, Inc. (“Respondent” or “AssetMark”).

**II.**

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

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that

#### Summary

1. These proceedings arise out of registered investment adviser AssetMark, Inc.'s ("AssetMark") breaches of its fiduciary duty to advisory clients through its failure to adequately disclose its conflicts of interest involving a cash sweep program operated by an affiliated custodian and its receipt of payments from certain other custodians.

2. AssetMark offers clients a variety of investment strategies, which have been curated by AssetMark, through its AssetMark Platform ("Platform"). The Platform also offers tools for clients and their financial professionals to develop individual investment strategies. AssetMark allows clients to choose one of several custodians to hold their assets and complete trades, among other services. One of those custodians, AssetMark Trust Company ("ATC"), is affiliated with AssetMark and both share a common parent company.

3. First, from at least September 2016 to January 2021, AssetMark failed to provide full and fair disclosure of conflicts of interest arising from ATC's cash sweep program, which transferred, or "swept," clients' uninvested cash into interest-earning bank accounts. Specifically, AssetMark failed to fully disclose conflicts arising from the fact that AssetMark and ATC were involved in setting the fee that ATC received for operating the cash sweep program. AssetMark requires clients using the Platform to maintain a cash allocation to cover fees and other expenses, typically targeted at 2%. For clients who selected ATC as a custodian, ATC generally enrolled clients in its FDIC-Insured Cash Deposit Program ("ICD Program") where customer cash was held in FDIC-insured interest bearing accounts at various banks. In addition to the asset-based fees AssetMark earned as an adviser, ATC charged AssetMark clients a fee on assets in the ICD Program, which reduced the amounts of interest remitted from the interest-bearing accounts to clients. However, during the relevant time period, AssetMark failed to provide full and fair disclosure regarding AssetMark and ATC's role in setting the ICD Program fee or the related conflicts of interest.

4. Second, from at least January 2016 through August 2019, AssetMark received custodial support payments from certain third-party custodians on the Platform without full and fair disclosure of the associated conflicts of interest to AssetMark clients. Custodial support payments were contracted amounts paid directly to AssetMark from third-party custodians based on assets held in certain no-transaction-fee ("NTF") mutual funds. While AssetMark disclosed receipt of the custodial support payments, it failed to disclose that in some cases there were lower-fee share classes with lower expense ratios than the NTF share classes, that would not result in payments to AssetMark.

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<sup>1</sup> 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.

5. In addition, AssetMark failed to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder related to its disclosure of conflicts arising from ATC's ICD Program and AssetMark's receipt of custodial support payments.

6. As a result of the conduct described above, AssetMark willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

### **Respondent**

7. **AssetMark, Inc.** is a registered investment adviser incorporated in California and headquartered in Concord, California. As of March 24, 2023, AssetMark reported that as of December 31, 2022 it serviced a total of 344,691 accounts and has \$55.2 billion in regulatory assets under management. AssetMark is a wholly-owned subsidiary of AssetMark Financial Holdings, Inc. ("AFHI").

### **Other Relevant Entities**

8. **ATC** is incorporated in Arizona with its principal place of business in Phoenix, Arizona. ATC is an AssetMark affiliate and an Arizona Department of Insurance and Financial Institutions-regulated trust company that offers custodial services to some AssetMark clients through a sub-custodial agreement with a large national brokerage services provider. ATC is a wholly-owned subsidiary of AFHI.

9. **AssetMark Financial Holdings, Inc.** ("AFHI") is incorporated in Delaware with its principal place of business in Concord, CA. AFHI is a publicly-traded holding company. AssetMark and ATC are wholly-owned subsidiaries of AFHI. AFHI trades on NYSE under the ticker AMK. (NYSE: AMK). AFHI reports revenues generated by AssetMark and ATC in its periodic filings.

### **Background**

10. AssetMark operates one of the largest turnkey asset management programs ("TAMPs"). AssetMark's TAMP provides representatives of broker dealers and investment advisers ("financial professionals") unaffiliated with AssetMark, with various investment services, such as model portfolios, investment research, and portfolio allocation. Clients work with their financial professionals to access the investment services AssetMark makes available on the Platform.

11. The unaffiliated financial professionals, whose employers act as solicitors for AssetMark, refer their clients to AssetMark pursuant to a solicitation agreement with their employer. Under the solicitation agreement, the employers of the financial professionals agree to market and sell AssetMark's advisory services to investing clients.

12. Once the financial professionals have identified investing clients, AssetMark enters into an Investment Management Services Agreement (“IMSA”) with both the investing client and the unaffiliated financial professional making the referral. Pursuant to the IMSA, the client agrees to pay AssetMark an asset-based fee (“Platform Fee”) that varies based on the account size. The financial professional agrees to consult with the client and provide initial and ongoing suitability review and determination of investments for the client. At all times, AssetMark agrees to provide the client with the advisory services, including due diligence on the portfolio strategists and resulting strategies available on the Platform.

13. Clients who access the AssetMark Platform pay a Platform Fee to AssetMark, which is an asset-based fee to provide compensation to AssetMark for its advisory, administrative, and other services.

14. AssetMark has four custodians on its Platform, which generally maintain custody of client assets, process trades, and provide other services. The financial professional, along with the client, selects the custodian and portfolio strategy from those made available by AssetMark. ATC is the only custodian on the Platform that is affiliated with AssetMark. As of May 2019, ATC was the custodian for approximately 80% of accounts on the Platform.

15. As an investment adviser, AssetMark was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients that could affect the advisory relationship. To meet this fiduciary obligation, AssetMark was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that the client could understand the conflict of interest and have an informed basis on which to consent to or reject the conflicts.

#### **ATC’s Insured Cash Deposit Program**

16. AssetMark requires that each portfolio strategy on its Platform include an allocation to cash to cover fees and other potential expenses. For the majority of accounts the target cash allocation is 2%. AssetMark requires each custodian on the Platform to provide an investment cash solution, such as a money market fund or other similar product, in which to invest this cash. Investing clients pay the Platform Fee to AssetMark based on their total assets under management, including the allocation to cash.

17. Beginning in September 2016, custodian ATC offered clients its ICD Program as the default cash strategy for clients’ target cash allocations. ATC holds for the benefit of its clients assets in its ICD Program in interest-bearing deposit accounts at certain banks and those banks pay fees and make service payments to ATC, which is based on the amount of deposits held at such banks for ATC’s clients.

18. As part of the ICD Program, the banks make a total payment based on the amount of AssetMark client cash deposits at the banks (the “Total Payment”). ATC retains a portion of the Total Payment as a fee, which AssetMark refers to as the “ICD Program Fee.” The difference between the Total Payment and the ICD Program Fee is paid as interest to the AssetMark clients

whose funds are held on deposit. AssetMark describes the ICD Program Fee as compensation for record-keeping and administrative services. A committee made up of individuals that serve as AssetMark and ATC officers sets the ICD Program Fee, and thus AssetMark and ATC directly determined how much of the Total Payment made by the banks ATC would retain as compensation.

19. The determination of the ICD Program Fee affects the interest a client earns on their cash allocation in ATC's ICD Program. The higher the ICD Program Fee paid to ATC, the lower the interest paid by the banks; the lower the ICD Program Fee paid to ATC, the higher the interest paid by the banks to the clients. During the relevant period, AssetMark and ATC set the ICD Program Fee to be approximately 85% of the Total Payments remitted from the underlying banks on AssetMark client assets.

20. Since at least September 2016 through January 2021, AssetMark failed to fully disclose that AssetMark and ATC together set the ICD Program Fee and the potential associated conflicts of interest that arose from AssetMark's participation.

21. In its Form ADV Part 2A brochures provided to clients, AssetMark disclosed that the ICD Program was part of the client's account asset allocation, that ATC was an affiliate of AssetMark through its shared parent AFHI, and that ATC expects to earn higher fees on cash deposited in the ICD Program than on cash invested in other products. However, AssetMark failed to disclose in its ADV AssetMark's role in setting the ICD Program Fee paid to its affiliate ATC, and how the ICD Program Fee directly impacts the interest rate paid to clients.

22. Additionally, as part of the ICD Program, ATC provided AssetMark clients with an ICD Disclosure Document ("ICD Brochure"), which described the ICD program and provided additional disclosures about the program. The ICD Brochure stated that the ICD Program Fee and the interest rates paid to clients in the ICD Program are determined by ATC. Although the ICD Brochure explained that ATC has discretion over the ICD Program Fee and the ICD Program Fee paid to ATC can affect the interest rate paid on client deposits, until January 2021, there was no disclosure that AssetMark was involved with ATC in setting the ICD Program Fee.

23. From September 2016 through January 2021, AssetMark failed to provide full and fair disclosure to its advisory clients regarding its role in setting the ICD Program Fee, and AssetMark's associated conflicts of interest.

### **Custodial Support Payments**

24. Certain of the third-party portfolio strategies that AssetMark selected for the Platform included no-transaction-fee ("NTF") mutual funds. NTF mutual funds are mutual funds that investors can purchase or sell without paying a transaction fee. NTF mutual fund share classes generally have higher expense ratios paid by shareholders than other non-NTF share classes of the same fund. Third-party custodians who facilitate the purchase of mutual fund shares for investing clients generally pay a portion of the higher revenue they earn on NTF mutual fund share classes to investment advisers who make them available to clients.

25. Since at least January 2016, AssetMark made available portfolio strategies on its Platform that included NTF mutual funds, certain of which paid revenue sharing to the third-party custodians. The third-party custodians paid AssetMark custodial support service payments for the services AssetMark provided the custodians in the establishment and ongoing support of the client accounts placed with those custodians. These custodial support payments were paid directly by the third-party custodian to AssetMark pursuant to an agreement with the custodian and based on assets held in certain NTF mutual funds. These payments created a financial incentive for AssetMark to select portfolio strategies for its Platform that included NTF mutual funds that resulted in the payment of custodial support payments over those that did not, including lower-cost share classes of the same mutual fund that did not pay custodial support payments.

26. From at least January 2016 through August 2019, AssetMark, in its Form ADV Part 2A filings, disclosed to its clients that AssetMark received custodial support payments on certain NTF funds, but did not fully disclose the associated conflicts of interest. Specifically, AssetMark failed to disclose that in some cases there were lower-fee, higher-return share classes available that did not result in custodial support payments. Accordingly, AssetMark failed to disclose that it had an incentive to have NTF share classes on its Platform that resulted in custodial support payments over those that did not.

27. By January 2021, AssetMark renegotiated its agreements with each of the custodial-support-paying third-party custodians to eliminate custodial support payments.

### **Compliance Deficiencies**

28. AssetMark did not implement written policies and procedures reasonably designed to disclose all material facts regarding its affiliate ATC's ICD program and AssetMark's receipt of custodial support payments, and associated conflicts of interest. AssetMark had written policies and procedures concerning the drafting and review of its Forms ADV. AssetMark's written policies and procedures also stated that potential payments to AssetMark or its affiliates could give rise to conflicts of interest. However, AssetMark failed to implement policies and procedures for the review and disclosure of conflicts of interest with respect to the matters addressed herein.

### **Violations**

29. As a result of the conduct described above, Respondent willfully<sup>2</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 203(e), "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

indirectly, to “engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.” Scierter 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)).

30. 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 and Civil Penalties**

31. The disgorgement and prejudgment interest ordered in Section IV.C is consistent with equitable principles and 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, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **AssetMark’s Remedial Efforts**

32. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by the Respondent.

### **Undertakings**

33. Respondent has undertaken to:

A. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning ATC’s ICD program.

B. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent’s policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with disclosures regarding ATC’s ICD program.

C. Within 60 days of the entry of this Order, notify affected investors of the terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

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has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

D. Within 90 days of the entry of this Order, certify, in writing, compliance with the undertakings set forth 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 Jeremy Pendrey, Assistant Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104, 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, N.E., Washington, DC 20549.

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

F. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and 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 may be transferred by the Commission to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

#### IV.

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

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

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

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty totaling \$18,326,709.57 as follows:

- (i) Respondent shall pay disgorgement of \$6,779,138.34 and prejudgment interest of \$2,047,571.23 consistent with the provisions of this Subsection C.



- (ii) Respondent shall pay a civil monetary penalty in the amount of \$9,500,000.00 consistent with the provisions of this Subsection C.
- (iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- (iv) Within 10 days of the issuance of this Order, Respondent shall deposit \$18,326,709.57, the full amount of the disgorgement, prejudgment interest, and civil penalty (the "Fair Fund"), into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.
- (v) 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.
- (vi) Respondent shall distribute from the Fair Fund an amount representing financial harm by the practices discussed above to affected investors and reasonable interest paid on such financial harm from January 2016, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this

Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

- (vii) Respondent shall, within ninety [90] days from the date of this Order, submit a calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Distribution 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 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.
- (viii) Respondent shall, within 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 investor. The Payment File should identify, at a minimum: (1) the name of each affected investor; (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. The Respondent shall exclude from the payee file all payments to payees that appear on the U.S. Treasury Department Specially Designated Nationals List.
- (ix) Respondent shall complete the disbursement of all amounts payable to affected investors within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiii) of this Subsection C. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.
- (x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the

Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph (xii) 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 AssetMark as the 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 Jeremy Pendrey, Assistant Director, 44 Montgomery Street, Suite 2800, San Francisco, California 94104, or such other address as the Commission staff may provide.

- (xi) 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 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 the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). 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.
- (xii) Within 150 days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. The 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 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 investors 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 Jeremy Pendrey Assistant Director, 44 Montgomery Street, Suite 2800, San Francisco, California 94104. 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.

- (xiii) 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, paragraph 33, A – E above.

By the Commission.

Vanessa A. Countryman  
Secretary