

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-13446

In the Matter of

**AMERICAN SKANDIA INVESTMENT
SERVICES, INC.,**

Respondent.

FINAL DISTRIBUTION PLAN

I. BACKGROUND

A. Description

1. On April 17, 2009 the Securities and Exchange Commission (“Commission” or “SEC”) issued an 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”) finding that American Skandia Investment Services, Inc. (“Respondent” or “ASISI”) violated Section 206(2) of Investment Advisers Act of 1940 by accommodating widespread market timing in American Skandia Trust (“AST”) portfolios or sub-accounts that serve as funding vehicles for variable annuities issued by American Skandia Life Assurance Corporation (“ASLAC”) from at least January 2000 through in or around September 2003.¹ The Respondent consented to the entry of this Order

¹ 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 (the “Order”), Release No. 2867 (April 17, 2009) at Section I and Section III, ¶¶ 1, 3.

without admitting or denying the findings set forth in the Order. The Order required the Respondent to pay disgorgement in the amount of \$34 million and a civil money penalty in the amount of \$34 million into a fair fund. The fair fund American Skandia Distribution Fund (“Fund”) was established with these monies in the amount of \$68 million pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

2. This submission serves as the final Plan of Distribution (“Distribution Plan” or “Plan”) for Fund monies as required by the April 17, 2009 Order. This Fund was established to provide for the ultimate distribution of the disgorgement and civil money penalty to investors who were harmed by the conduct described in the Order (“Eligible Investors”). This Fund has been deposited at the U.S. Treasury Bureau of Public Debt (“Treasury”) for investment in government obligations. Other than interest from these investments, it is not anticipated that the Fund will receive additional funds. This Plan of Distribution for Fund monies is subject to approval by the Commission.

B. Appointment of Independent Distribution Consultant

3. Paragraph 27 of the Order required Respondent to retain an Independent Distribution Consultant (“IDC”) to develop a Distribution Plan for the Fund according to a methodology developed in consultation with the Respondent and not unacceptable to the staff of the Commission and the independent members of the AST Board of Trustees.

4. Pursuant to the Order, the Respondent retained Francis E. McGovern, Professor of Law at Duke University, as the IDC.² Professor McGovern has developed this Distribution Plan in consultation with Commission staff, Respondent, and COMPASS LEXECON, an economics consulting firm retained by him in connection with this matter. The IDC’s compensation and expenses shall be paid exclusively by the Respondent.³

II. DEFINED TERMS

² Professor McGovern is widely published on the topics of complex litigation, alternative dispute resolution, and settlement fund distributions. Professor McGovern also has broad experience in mediating settlements and in designing and implementing claims resolution processes.

³ Order at ¶ 27.

5. This Distribution Plan makes use of a number of terms with specific meanings and references. The following is a list of definitions for the specific terms used herein:

“Accumulation Unit Value” or “AUV” means the annuity equivalent of a variable annuity’s Net Asset Value or NAV. AUV is calculated by dividing assets in the sub-account pool by the number of shares, resulting in the AUV, which is also the variable annuity sub-account’s daily price. The AUV reflects deductions for mortality and expense costs, also known as the insurance charge, and an administration charge.⁴

“ASLAC” means American Skandia Life Assurance Corporation.

“AST” means American Skandia Trust.

“AST sub-account” means American Skandia Trust portfolios in which ASLAC variable annuity contract holders could opt to invest.

“Approval Date” means the date on which the Commission issues an administrative order approving this Distribution Plan.

“Commission” or “SEC” means the United States Securities and Exchange Commission.

“contract holder” means an investor in a variable annuity who has signed the annuity contract and is considered the contract owner.

“De Minimis Amount” means the minimum threshold amount that an investor must be allocated in order to receive a payment from this settlement. The “De Minimis Amount” for this Fund is \$10 or an amount to be determined by the IDC, and acceptable to the Commission staff, in light of the final Fund allocations to individual contract holders.

“De Minimis Pool” means the aggregate amount of allocated distributions that fall under the “De Minimis Amount.” This amount will be allocated to certain affected investors after a gross-up process is applied.

“Distributable Amount” means: (i) \$68 million plus (ii) interest, if any, actually earned on the foregoing amounts through the end of the month prior to the Approval Date less (iii) any federal, state, or local taxes imposed on the interest. Amounts sufficient to cover any taxes owed on the interest earned on the Settlement amount as of the time of the distributions under the Plan shall be set aside and not distributed. Any earnings on the amounts set aside to pay applicable taxes will be transferred to the U.S. Treasury.

“Eligible IDFs” mean those insurance dedicated funds (“IDFs”) affected by the conduct described in the Order during all or part of the Relevant Period.

“Eligible Investor” means a variable annuity contract holder who held shares in one or more AST Sub-accounts during the Relevant Period affected by the conduct described in

⁴ Choice2000 Prospectus, May 3, 1999, at p. 6.

the Order, and is due to receive an allocation of at least the De Minimis Amount from the Fund.

“Eligible Sub-Accounts” means those AST sub-accounts affected by the conduct described in the Order during all or part of the Relevant Period and slated to receive an allocation from the Fund.

“Escrow Bank” means Huntington Bank, a financial institution selected by the IDC to assist in the distribution of Fund monies. The Escrow Bank will hold Fund assets in an escrow account in the name of the Fair Fund during the check-cashing period.

“Fund” or “Fair Fund” means the American Skandia Distribution Fund, a fair fund which was established by the SEC to hold the \$68 million disgorgement funds and civil money penalty paid by the Respondent in compliance with the terms of the Order.

“Fund Administrator” means a services company retained to assist the IDC in the distribution and administration of the Fair Fund.

“IDC” or “Fund IDC” means Professor Francis E. McGovern, the Independent Distribution Consultant retained by the Respondent pursuant to the terms of the Order.

“IDF” means an insurance-dedicated fund. An insurance-dedicated fund is a tax-deferred investment vehicle. Similar to mutual funds, IDFs can have multiple sub-accounts that are analogous to share classes within a mutual fund; the sub-accounts are typically associated with a specific fee structure.

“Ineligible Contract Holders” means those variable annuity contract holders determined by the IDC to meet the criteria for market timing behavior. All of the trades of the Ineligible Contract Holders were used to calculate dilution in sub-accounts affected by their market timing activity. Ineligible Contract Holders are not eligible to receive Fund monies.

“LIFO” means last-in, first-out, an accounting convention used in this Distribution Plan.

“market timing” means (a) the frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual-fund shares in order to exploit inefficiencies in the mutual-fund pricing. Market timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares and can disrupt the management of the mutual fund’s investment sub-account. Market timing can also cause the targeted mutual fund to incur additional costs, which are borne by all the shareholders.⁵ In this Plan, market timing refers to (a) the frequent buying and selling of shares of the same AST sub-account, or (b) buying or selling shares in different AST sub-accounts in order to exploit inefficiencies in pricing.⁶

⁵ Order at ¶ 8.

⁶ Contract holders of variable annuity products invest in shares of sub-accounts of IDFs, and, therefore, market timing of variable annuities refers to the frequent trading of shares of these sub-accounts.

“Omnibus Contract holders” means the contract holder of record who is the financial intermediary, and holds the annuity on behalf of clients who are the underlying investors of the variable annuity contract. Contracts held by Retirement Plans, as defined below, are not considered Omnibus Contract holders for purposes of this Distribution Plan, although a Retirement Plan could be an investor (of record or otherwise) with other investors within an Omnibus Contract holder.

“Order” means the 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 against American Skandia Investment Services, Inc., dated April 17, 2009.

“Plan” or “Distribution Plan” means this plan of distribution as developed by the IDC and submitted for approval by the Commission.

“Relevant Period” means the period of the conduct described in the Order; January 1, 1998 through September 2003.⁷

“Respondent” or “ASISI” means American Skandia Investment Services, Inc.. ASISI was formerly an indirect wholly owned subsidiary of Skandia Insurance Company Ltd. (publ). On May 1, 2003, ASISI became an indirect subsidiary of Prudential Financial, Inc. (“PFI”). The Respondent at all relevant times was the investment adviser to AST and was registered with the Commission as an investment adviser under Section 203 of the Advisers Act.⁸

“Retirement Plan” for purposes of this Plan means contract holders of an ASLAC variable annuity that are defined as an “employee benefit plan,” in Section 3(3) of ERISA, which is not (1) an Individual Retirement Contract holder, including a traditional IRA, a Roth IRA, a SEP IRA, a SARSEP IRA, or a SIMPLE IRA, or (2) a Section 403(b)(7) custodial contract holder under a program not established or maintained by an employer, whether or not the employee benefit plan is subject to Title 1 of ERISA.

“Settlement Amount” means the \$68 million paid by Respondent to the Commission pursuant to the terms of the Order.⁹

“sub-account” in this Plan means an underlying variable annuity portfolio in which variable annuity investors could opt to invest. Depending on the year, there were 50-91 sub-accounts from which investors could choose, 33-41 of which were sub-accounts of AST.¹⁰

⁷ Assurance of Discontinuance pursuant to Executive Law § 63(15), Attorney General of the State of New York Bureau of Investment Protection, in the Matter of American Skandia Investment Services, Inc., Respondent. The Order at ¶ 9 provides that the conduct described in the Order covers the period from at least January 2000 through in or around September 2003, which is consistent with the Assurance of Discontinuance cited above.

⁸ Order at ¶ 4.

⁹ Order at Section IV, ¶ D.1.

¹⁰ Order at ¶ 6.

“sub-adviser” means an investment adviser hired to sub-advise certain of AST’s sub-accounts; ASISI contracted with sub-advisors to make the day-to-day investment decisions for such sub-accounts.¹¹

“Tax Administrator” means Damasco & Associates LLP, a certified public accounting firm, appointed by the Commission to administer taxes for the Fund in this proceeding.

“Transaction Database” means the database provided by Respondent to the IDC containing information regarding all trading activity during the Relevant Period in sub-accounts that were available to contract holders of ASLAC variable annuity contracts.

“variable annuities” mean securities in the form of insurance contracts that provide for tax-deferred accumulation during the accumulation period and various payout options, including a series of payments to be made to a person named as the “annuitant” in the contract during the payout period. The payments typically begin upon the annuitant’s retirement.¹² Variable annuity products typically offer access to mutual funds. Contract holders are able to invest in a variety of mutual funds in various fund families through sub-accounts of an insurance company.

III. DISTRIBUTION METHODOLOGY AND PROCEDURES

A. Objective of the Plan

6. The Order provides that the IDC shall develop a Distribution Plan for the distribution of the \$68 million in disgorgement and civil money penalties, and any interest or earnings thereon, according to a methodology developed in consultation with ASISI and acceptable to the staff of the Commission and the Independent Trustees of the AST funds.¹³ Accordingly, this Plan is designed to allocate Fund monies among those ASLAC customers invested in sub-accounts harmed by the conduct described in the Order during the Relevant Period. This allocation will be based upon an analysis that will reflect an estimate of the proportionate dilution in value of each of the harmed sub-accounts (“Eligible Sub-Accounts”) during the Relevant Period relative to the dilution in all Eligible Sub-Accounts during that period. For example, if the total dilution calculated for all Eligible Sub-Accounts during the Relevant Period is \$100, and the dilution calculated for a particular Eligible Sub-Account during that period is

¹¹ Order at ¶¶ 2, 6.

¹² Order at ¶ 5.

¹³ Order at ¶ 27.

\$10, then the Eligible Sub-Account will be allocated 10% of the Distributable Amount as its Fund payment.

7. This Plan is designed to compensate those harmed by the practices described in the Order. Because there are over 370 Eligible Sub-Accounts which represent 22 IDFs,¹⁴ the feasibility and practicality of distributing Fund monies to the underlying investors who held these sub-accounts during the Relevant Period (“potential Eligible Investors”) was examined. Based on the large volume of underlying investors in each of the harmed IDFs, it was determined that it would be feasible and practical to distribute Fund monies to the underlying investors of IDFs where such IDFs are slated to receive at least \$1 million in allocations from the Fund. Consequently, under this Plan, over 95% of Fund monies are to be distributed to the underlying investors of Eligible Sub-Accounts (or affected IDFs) who were invested in these Eligible Sub-Accounts during the Relevant Period. Of the 22 IDFs, six will receive at least \$1 million in allocations from the Fund for distribution to underlying investors. For the remaining 16 IDFs slated to receive less than \$1 million each from the Fund, Fund monies will be deposited to the asset base of the IDF for the benefit of current investors.

8. Fund monies will be distributed to Eligible Investors of Eligible Sub-Accounts and the asset bases of certain IDFs. The Plan’s methods to calculate each Eligible Investor’s share of Fund monies are intended to result in a fair and equitable allocation to affected ASLAC variable annuity contract holders. The realized profits method¹⁵ is used to estimate the dilution¹⁶ of Eligible Sub-Accounts during the Relevant Period from the conduct described in the Order. The methodology for calculating Fund allocations and payments to Eligible Investors and IDFs is described in further detail in section B, paragraphs 9-22. In the view of the IDC, this methodology constitutes a fair and reasonable allocation of Fund monies.

¹⁴ An IDF is typically associated with multiple sub-accounts, and the assets of the sub-accounts associated with a single IDF are co-mingled. Then, if a particular sub-account within an IDF has been timed, and the underlying assets were diluted, then the investors of other sub-accounts associated with this IDF were also harmed by this dilution. The different sub-accounts within an IDF are typically associated with a specific fee structure.

¹⁵ The realized profits method measures the profits earned by a contract holder through trading associated with market timing activity in mutual funds, or, in this case, AST managed sub-accounts. Such profits are calculated as the difference between the sell and buy price of the sub-account multiplied by total number of shares in a transaction executed by a contract holder. Any dividends and/or distributions accrued while these shares were held are already factored into the price (AUV) of the sub-account.

¹⁶ See paragraph 15 below for a description of dilution.

B. Methodology Used to Develop Distribution Plan

Transaction Database

9. The Respondent provided the IDC with databases containing information regarding all sub-account transactions of ASLAC variable annuity contract holders executed during the Relevant Period, known collectively as the “Transaction Database”. The Transaction Database identifies for each transaction the contract holder’s account number; transaction type; sub-account number; IDF cusip; buy/sell indicator; date of the transaction; settlement or process date; number of shares; net amount of transaction; and the daily AUV for the sub-account.

10. All data provided to the IDC and any analyses produced by the IDC are strictly confidential and held exclusively by the IDC and those retained to assist the IDC.

Identifying Market Timers

11. The Order in this matter provides that ASISI accommodated market timing activity in certain AST managed sub-accounts.¹⁷ Contract holders that engaged in market-timing activity were not specifically identified in the Order, and, therefore, it was necessary to examine all trading in the AST sub-accounts available to variable annuity contract holders during the Relevant Period.

12. As noted above, the Transaction Database included all of the transactions in sub-accounts available to ASLAC variable annuity contract holders. All AST sub-accounts, except for money market sub-accounts and fixed income sub-accounts, were examined, and the trading activity for all contract holders within these sub-accounts was analyzed. The number of transactions, the duration of the holding period of positions within a sub-account, and the dollar amounts transacted were analyzed for each contract holder. A number of filters were imposed to identify potential market timing activity. Market timers were identified as those contract holders who incurred at least 12 purchase and sale combinations or roundtrips of \$100,000 or more within a 30 day period in at least one year, and liquidated at least 90% of their total purchases within 30 days.

¹⁷ Order at ¶ 9.

13. The filters described above were subjected to a sensitivity analysis which confirmed their appropriateness for identifying contract holders who most likely timed the AST sub-accounts at issue. The analysis of the trading activity in the relevant AST sub-accounts identified 626 contract holders as potential market timers. The IDC examined dilution rates¹⁸ for the aggregated trading by these contract holders, and those contract holders with a dilution rate below 0.1% were removed.¹⁹ This final filter removed an additional 99 contract holders, and the trading activity of the remaining 527 contract holders, defined above as the “Ineligible Contract Holders,” formed the basis of the dilution analysis. During the Relevant Period, the Ineligible Contract Holders were collectively involved in transactions with approximately 120 AST sub-accounts representing 40 IDFs.

14. The IDC has reviewed the list of Ineligible Contract Holders, and the list contains the named market timers in the NYAG’s Assurance of Discontinuance. The named market timers will not be eligible to receive a distribution from the Fund, and an attempt to notify them will be made pursuant to paragraph 46 of this Plan. The Respondent has also reviewed this list.

Estimating Dilution Losses in the Sub-Accounts

15. This Plan uses dilution to measure the harm caused by the trades of the Ineligible Contract Holders. Dilution is the difference in the wealth of investors in a mutual fund with market timer trades compared to the same fund without these same trades. “In other words, dilution is the amount of money necessary to return investors to where they would have been *but for* the flows from market timers.”²⁰ For purposes of this Plan, dilution will refer to the difference in the wealth of contract holders in a sub-account with market timer trades compared to the same sub-account without these same trades.

¹⁸ A dilution rate is calculated as the sum of the profits gained on the first day after each purchase and the losses avoided on the first day after each sale, divided by the sum of the total purchases and sales of the contract holder. For example, if on average the AUV increases by 30 basis points the day after a contract holder purchases shares in a sub-account, and declines 20 basis points the day after the contract holder sells shares in the sub-account, the dilution rate would average 25 basis points, or 0.25%.

¹⁹ The IDC determined that market timers are typically associated with dilution rates of 0.2% and above; however, in this case the IDC also determined that contract holders with dilution rates between .1% and .2% should not be removed from the list of Ineligible Contract Holders because the sensitivity analysis suggested that those contract holders were engaged in market timing.

²⁰ See Greene, Jason T. and Ciccotello, Conrad S., “*Mutual Fund Dilution from Market Timing Trades*” (September 27, 2004). Available at SSRN: <http://ssrn.com/abstract=596482> or doi:10.2139/ssrn.596482

16. As previously indicated, the allocation of Fund monies to sub-accounts is based upon an estimate of the relative dilution in the value of the Eligible Sub-Accounts. The amount of dilution that results from market timing activity is directly related to how the sub-adviser²¹ of a sub-account invests the influx of cash flows received from the market timers. A precise estimate of dilution losses would require access to information about how individual sub-advisers invested the cash received from individual market timers, *i.e.*, whether the sub-advisers invested the market timers' cash on the same day or held the cash in reserve. Such information, however, is not available to the Respondent or to the IDC. In this case, because such information cannot be obtained, it was determined after careful review that the realized profits measure provides a fair and equitable method for allocating Fund monies consistent with the guidelines set forth in the Order.

17. The dilution analysis was conducted in the aggregate for all trades of the Ineligible Contract Holders in order to allocate Fund monies to Eligible Sub-Accounts.

Calculating Realized Profits of Market Timers

18. The implementation of the realized profits approach requires an adoption of several rules and conventions in order to ensure uniform treatment of transaction data and an accurate calculation of dilution under the Plan. As mentioned previously, all transactions associated with the Ineligible Contract Holders for the Relevant Period were identified in the Transaction Database.

19. In order to calculate actual profits made by the Ineligible Contract Holders, each sale, or transfer out, made by an Ineligible Contract Holder from a particular sub-account was matched to a purchase, or transfer in, by the same Ineligible Contract Holder to create a "roundtrip" transaction. "Sells" were matched with "buys" using the last-in, first-out ("LIFO") accounting convention. The LIFO convention makes the assumption that sells are processed in chronological order. Each sell, therefore, was matched to the buy that immediately preceded it. One sell might have been matched to multiple buys, and many sells could have been matched to one buy to adjust for quantity differences. LIFO is generally accepted as a reasonable method to

²¹ "Sub-adviser" means an investment adviser hired to sub-advise certain of AST's sub-accounts; ASISI contracted with sub-advisers to make the day-to-day investment decisions for such sub-accounts; Order at ¶¶ 2, 6.

match purchases to sales to create the roundtrips used to calculate profits, and was, thereby, adopted for this Plan.

20. After examining the roundtrip transactions and conducting additional research, it was necessary to impose some basic limits to exclude certain market timer trades from the profits analysis. Market timers profited by moving money in and out of sub-accounts frequently in order to exploit inefficiencies in sub-account pricing, and the benefits of any market timing activity would be diluted if a market timer held a position in a sub-account for an extended period. It was practical, therefore, to limit the number of roundtrip market timer transactions included in the profits calculation based upon the length of the roundtrip. This Plan included in the profits analysis only those roundtrips that occurred within 30 days.

21. Profits on a roundtrip for a contract holder were calculated as the difference between the selling AUV price and the purchase AUV price multiplied by the number of shares traded in each roundtrip. The total dilution for each sub-account was calculated by aggregating the profits and losses earned for all roundtrips by the Ineligible Contract Holders for each sub-account during the Relevant Period. If some of the Ineligible Contract Holders suffered losses on roundtrips, the losses were netted against the profits earned on other roundtrips during the Relevant Period. Profits of Ineligible Contract Holders were netted against losses of other Ineligible Contract Holders if the roundtrips were in the same IDF.

22. The net dilution attributed to the Ineligible Contract Holders during the Relevant Period is approximately \$67 million. For purposes of distribution, however, Fund allocations were made based on IDFs that incurred positive dilution, i.e., were harmed by the market timing activity. The estimated total positive dilution of Eligible IDFs was approximately \$76 million, and, therefore, a proportional discount factor will be applied to the final allocations to Eligible IDFs and Eligible Investors.

C. Implementation of the Distribution Plan

23. The process of calculating the distributions to be made and of actually causing those distributions to occur will be implemented according to the steps outlined herein.

24. As mentioned in the previous section, estimates of dilution were calculated based on a realized profits approach, and dilution amounts were determined for each sub-account. Once dilution was calculated at the sub-account level, the sub-accounts were rolled up to the IDF level, and each IDF was associated with a dilution amount. As mentioned previously, due to the large volume of contract holders within each IDF and the relative size of the payment to an IDF, it was necessary to impose some limitations on whether distributions would be made to the underlying investors of the IDF or whether payments would be made to the asset bases of the IDFs. It was found to be practical to distribute to the underlying investors of the IDF where the contemplated Fund allocation to the IDF is at least \$1 million.

25. Accordingly, the following two distribution methods will be implemented in order to achieve a fair, equitable, reasonable, and timely means by which to distribute Fund monies.

Distributions to the Asset Base of Eligible Insurance-Dedicated Mutual Funds

26. As mentioned above, for contemplated distributions to the majority of the IDFs (16 out of 22), it is not practical or feasible to undertake distributions to underlying investors of the IDF. In these instances, the IDF will receive its share of Fund monies, and these monies will be deposited directly into the IDF's asset base.

27. In order to implement this method of distribution, the IDF fund family²², will be notified that the allocated monies are designated solely for investors and not to be used for administrative or management fees. In addition, the fund family will be required to certify that the money will be deposited into the IDF asset base as intended.²³

28. *Redesignation.* If a fund family cannot be determined for a particular IDF, then the fund ownership will be examined to determine eligibility for distribution. If the IDF, for example, has been acquired by merger or sale of assets, the entity that controls the IDF will become the designated party. The controlling entity will be treated as if it had owned or

²² The family of mutual funds associated with the IDF.

²³ If a fund family fails to certify that Fund monies will be deposited into their IDFs' asset bases within the deadline specified by the Fund Administrator, then these IDFs will no longer be considered eligible to receive a payment, and these Fund monies will be allocated to the remaining IDFs in accordance with the methodology outlined in paragraph 6. The Fund Administrator will maintain records of each attempt to obtain the certification for an IDF and each response received, if any. The records of non-responsive fund families will be provided to Commission staff at least 45 days before the scheduled distribution is to be made.

controlled the IDF at the time of the market timing activity. If an IDF no longer exists, or IDF ownership cannot be determined, then neither the IDF nor the investors in the IDF will be eligible for compensation. Monies allocated to such IDFs will be added back to the Distributable Amount, and these monies will be allocated to the remaining IDFs in accordance with the methodology outlined in paragraph 6.

29. The IDC or Fund Administrator shall cooperate with the Tax Administrator to provide necessary Forms W-9 or W-8BEN to the controlling entity of the IDF, to determine withholding status, if any, and to accomplish any withholding required.

30. Once the Tax Administrator has completed verification of tax withholding amounts and any additional request for funds, the list of payees will be submitted to the Commission staff to obtain approval for the disbursement. After the issuance of the order directing disbursement, payments will be made to IDFs according to a time schedule determined after consultation with Commission staff.

Distributions to Underlying Investors of IDFs and their Associated Eligible Sub-Accounts

31. In certain instances, as discussed above, distributions to underlying investors may be feasible and practicable. The following series of steps is contemplated to distribute Fund monies to Eligible Investors for qualifying IDFs:

- a. The Respondent will be asked to collect relevant share ownership information for individual contract holders of Eligible Sub-Accounts of qualifying IDFs during the Relevant Period.²⁴
- b. Once the relevant data have been collected, the IDC's staff will load and verify the integrity of these data on their systems. The IDC's staff will then calculate the payment amounts for each Eligible Investor. These payment amounts will be independently audited and verified.
- c. After payment amounts have been verified, a payee file will be provided to the Fund Administrator. The Fund Administrator will run the payee file against USPS records for updated address information and update the payee file as necessary. The Fund Administrator will set up a database of all Eligible Investors and track updates to addresses, name changes, etc.

²⁴ See "Gathering Information for Distribution to Eligible Investors," paragraphs 33-34, for further details on the data collection efforts required for distribution to individual accounts.

- d. The Fund Administrator or Escrow Bank will contract with a vendor to print and mail individual checks. Any returned checks will be traced for updated contact information, reissued and remailed.
- e. In addition to the above efforts, the Fund Administrator will establish a toll-free call center and web site to answer investor questions and for miscellaneous administrative requests.

De Minimis Threshold for Distributions to Eligible Investors from the Distribution Fund

32. A *de minimis* distribution amount (“De Minimis Amount”) for an Eligible Investor will be set at an amount determined by the IDC, and acceptable to the Commission staff, to be practicable and feasible given the costs associated with the distribution and the goal of achieving a high check cashing rate. In order to implement this *de minimis* distribution amount, the IDC will apply a gross-up formula. The gross-up formula requires that the distributions to Eligible Investors be ranked in descending order of the size of the contemplated distribution. The IDC will then calculate the total amount of distributions below the De Minimis Amount (the “*De minimis* Pool”). Beginning with the largest distribution less than the De Minimis Amount and proceeding through the list, the IDC will assign a distribution of the De Minimis Amount to each affected investor until the *De minimis* Pool is depleted and then all remaining affected investors below the De Minimis Amount will be set to \$0.

Gathering Information for Distribution to Eligible Investors

33. A data set that contains all relevant Eligible Investor data will be compiled for distribution of Fund monies by the Respondent. The Eligible Investors’ database will include contract holder data for direct purchase contract holders, omnibus contract holders, and retirement contract holders. The database will also incorporate information relating to known closed contracts and will contain information sufficient to allow for computation of distributions to all Eligible Investors. With the assistance of the Respondent, the database will be reviewed for accuracy.

34. It is necessary to identify each type of investor that may have held an ASLAC variable annuity contract. Variable annuity investors purchase and sell shares through several

distribution channels. For purposes of this Plan, contract holders are identified by the type of distribution channel through which they purchased the annuity. A contract owner may hold a contract on behalf of themselves or on behalf of multiple underlying investors. Each contract holder is treated separately in the Distribution Plan, as follows:

a. Direct Contract Holders. Some variable annuity investors purchase their variable annuity contract directly from an affiliated broker-dealer through a network of independent broker-dealers and banks.²⁵ For direct purchase contract holders, the identity of the contract holder is known to ASLAC.

b. Omnibus Contract Holders. Some variable annuity investors purchase their shares through group contracts which represent multiple owners, such as a school district with voluntary payroll deductions. Under an omnibus contract holder arrangement, the financial intermediary is the contract holder of record and holds the annuity on behalf of the underlying investors. The financial intermediary provides ASLAC with investor transaction data on the number of shares purchased and sold by all investors on an aggregate basis. The omnibus contract holder is transparent if there is access to records that identify the actual beneficial owners.

c. Retirement Plan Contract Holders. A portion of variable annuity investors purchase their annuity through tax-advantaged retirement plans, such as 401(k) plans. In this case, the contract holder of record is the retirement plan trustee.

Distribution to Direct Contract Holders

35. Under the IDC's direction, and with the assistance of the Respondent, all direct contract holders will be identified. The Fund Administrator will ensure that the name and address information is current for each Direct Contract Holder in the Eligible Investor's database and each payee file. The Fund Administrator will distribute fund payments to Direct Contract Holders via USPS mail.

Distribution to Omnibus Contract Holders

36. Under the IDC's direction, and with the assistance of the Respondent, all omnibus contract holders will be identified. The Fund Administrator will then approach all known omnibus intermediaries with contemplated distributions of \$1,000 or more. The Fund Administrator and the IDC will exercise commercially reasonable efforts to obtain from those

²⁵ Order at ¶ 7. ("ASLAC offered its variable annuities to the investing public through registration statements filed with the Commission. The variable annuities were distributed by an affiliated broker-dealer through a network of independent broker-dealers and banks.")

intermediaries all data necessary to allow the intermediary contract holders to be treated as though they are direct contract owners, or allow the omnibus contract holder to distribute Fund monies per the options detailed under Paragraph 40, sections b and c.

37. If an omnibus contract holder elects to have the Fund Administrator distribute Fund monies as outlined under Paragraph 40, section a, the Fund Administrator will request the name, address, Tax Identification Number and contract holder information for all underlying investors of the omnibus contract holder. Omnibus contract holders might consider this information commercially sensitive. The Fund Administrator shall maintain in confidence information identifying investors and any other information relating to underlying investors obtained from any omnibus contract holder pursuant to this Distribution Plan, and shall not share such information with the Respondent. The Fund Administrator, however, may share such information with its service providers or other parties, including the Commission staff, to the extent necessary to perform its duties under this Distribution Plan, and the Fund Administrator shall require that such service providers and other parties maintain such information in confidence.

38. The Respondent will reimburse omnibus contract holders for actual and commercially reasonable expenses incurred in gathering and providing the necessary data, subject to the limitation that the amount of reimbursement will not exceed the contemplated distribution. The Fund Administrator will maintain records of each attempt to obtain the cooperation of omnibus contract holders and each response received, if any. These records will be provided to Commission staff at least 45 days before the scheduled distribution is to be made.

39. No later than 150 days after Commission approval of the Plan, and after the expenditure of reasonable efforts to obtain these data from omnibus contract holders, where all determinations as to reasonableness will be made by the IDC, the data obtained from the omnibus contract holders will be added to the Eligible Investor's database. Under the IDC's direction, the database will be reviewed for accuracy.

Distribution Options for Omnibus Contract holders

40. All omnibus contract holders who respond to the Fund Administrator will receive a further communication that describes steps the recipient should take in light of its status as an omnibus or collective contract holder. For omnibus contract holders that receive distributions of \$1,000 or more, these options are:

- a. Provision of all necessary data to the Fund Administrator so that the Fund Administrator can apply an allocation methodology to the amount that has already been set to be distributed to that contract holder. Any omnibus contract holder who elects this option must notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives and must provide the necessary data within 60 days. Under this option, the Fund Administrator would perform the required calculations and distribute the payments to the beneficial investors of the omnibus contract holder within 90 days of receipt of these data.
- b. Provision of all necessary data to the Fund Administrator so that the Fund Administrator can apply an allocation methodology to the amount that has already been set to be distributed to that contract holder. Any omnibus contract holder who elects this option must notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives and must provide the necessary data within 60 days. Under this option, the Fund Administrator would perform the required calculations, but the omnibus contract holder would remain responsible for the actual distribution. The Fund Administrator will provide the omnibus contract holder with a beneficiary payment list within 60 days of obtaining the necessary data. Omnibus contract holders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficiaries in accordance with this Plan within 30 days from receipt of the beneficiary payment list, or they will not receive any proceeds.
- c. The omnibus contract holder will apply an allocation methodology specified by the IDC to the amount that has already been set to be distributed to that contract holder. Any omnibus contract holder who elects this option must notify the Fund Administrator within 30 days of the mailing of the letter describing these alternatives. Under this option, the omnibus contract holder would perform the required calculations and would be responsible for the actual distribution. The Fund Administrator will provide the allocation methodology within 30 days of notification by the omnibus contract holder. Omnibus contract holders electing this alternative must certify in writing to the IDC that they will distribute the proceeds to beneficial investors in accordance with this Plan within 90 days from receipt of the allocation methodology, or they will not receive any Fund proceeds.

In addition, omnibus contract holders who elect to distribute Fund monies as detailed under options b or c above, must certify that any checks will state on their face, "Void

After 90 Days,” and any proceeds from uncashed checks or any undistributed Fund monies will be returned by the omnibus contract holder by wire or check to the Fund Administrator within 5 business days from the stale date of the checks for deposit into the Distribution Fund escrow account.

41. All omnibus contract holders receiving distributions less than \$1,000 will have the following options for distribution of their Fund Allocation:

- a. Application of any distribution technique that the recipient, in the exercise of its reasonable discretion, deems to be consistent with its fiduciary or other legal obligations.
- b. Distribution of the proceeds to beneficiaries in the ratios that would be determined by an allocation methodology specified by the IDC within 90 days of receipt of the allocation methodology. Contract holders who elect this alternative will be provided with information sufficient to perform the necessary calculations.
- c. Return the check or the credit to the Fund Administrator or simply elect not to cash the check.

42. If the Fund Administrator is unable to obtain within a reasonable amount of time information identifying investors from an omnibus contract holder, the amount of Fund monies allocated to such omnibus contract holder shall be treated as “undistributed” for purposes of this Distribution Plan, and processed pursuant to paragraph 55 below. The Fund Administrator will maintain records of each attempt to contact an omnibus contract holder, and each response received, if any. These records will be provided to Commission staff at least 45 days before the scheduled distribution is to be made.

Distributions to Retirement Plan Contract holders

43. “Retirement Plan” as used in this Plan means an employee benefit plan, as such plans are defined in section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Contract holder (IRA), whether or not the plan is subject to Title I of ERISA. Under this Plan, IRA retirement plans are treated as “direct contract holders,” and distributions to IRAs will be made in accordance with Paragraph 35 of this Plan.

44. Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Plan requires the plan fiduciaries and intermediaries, as defined in

Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006 (the “Field Assistance Bulletin”), of Retirement Plans to distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including, but not limited to, the Field Assistance Bulletin within 90 days of receipt of the allocation from the Fund.

45. An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Plan among eligible Retirement Plans participating in an omnibus contract administered by such intermediary according to a method specified by the IDC, or according to the average share or dollar balances of the Retirement Plans’ investment in the contract during the Relevant Period, provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.

The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:

- a. Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology specified by the IDC. The IDC will make this methodology available to Retirement Plan fiduciaries.
- b. Retirement Plan fiduciaries may allocate the distribution *pro rata* (based on total contract holder balance) among the contract holders of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- c. Retirement Plan fiduciaries may allocate the distribution *per capita* among the contract holders of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- d. To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.

In view of, among other things, alternative distribution methodologies available to eligible plan fiduciaries and intermediaries, such intermediaries will not be reimbursed for the costs and expenses associated with the administration of the Distribution Plan.

Excluded Contract holders

46. No later than 15 days after the Commission's final approval of the Plan, the Fund Administrator will, in coordination with the IDC, attempt to notify the Ineligible Contract Holders (contract holders identified as market timers) that they are excluded from the distribution of the settlement funds. The notice will also inform the Ineligible Contract Holders that they can review the Plan through the Distribution Fund's website. An Ineligible Contract Holder may dispute its exclusion from the distribution by submitting, to the Fund Administrator, a sworn statement under penalty of perjury containing information about why it should not be excluded from the distribution. Any submission must be made to the IDC, through the Fund Administrator, within 45 days after final Plan approval. The IDC will resolve any dispute in his sole discretion and his decisions will be final. Any submissions may be shared with the staff of the Commission. False statements in connection with any submissions may subject the certifying individual or entity to civil or criminal sanctions, including but not limited to, liability under 18 U.S. C. § 1001, liability for any false statements made in an unsworn certificate under penalty of perjury as permitted by 28 U.S.C. § 1746, or liability under any other applicable law.

D. Validation, Approval and Process of Disbursement of Fund Monies

47. Payments from the Fund will occur in tranches, and for each tranche, in order to distribute funds, the IDC will submit a validated list of payees and the payment amounts to the assigned Commission staff, who will seek an order from the Commission to disburse Fund monies pursuant to Rule 1101(b)(6). For example, it is anticipated that the first tranche of payments will be comprised of allocations to the asset bases of the 16 IDFs and to the direct contract holders of the remaining 6 IDFs that are allocated more than \$1M from the Fund. Additional tranches consist of payments to beneficiaries of omnibus contract holders or direct contract holders for which distribution information was not available in the first tranche. The final distribution of residual monies will be made in accordance with paragraphs 55 and 56 below. These payment lists will be submitted to the Commission staff on a rolling basis after the Approval Date. The payees and amounts in each list will be validated under the IDC's direction. The validation will state that each payment list was compiled in accordance with the Plan and provides all information necessary to make disbursement to each distributee. Unless

otherwise directed by the Commission, the Commission staff will seek an order directing disbursement that releases funds to the escrow bank account established by the Fund Administrator based upon each validated list, and distributions will occur within five business days after issuance of the order. The Fund Administrator will report to Commission staff, within 30 days of each distribution mailing date whether the distribution has been accomplished.

Check Cutting Process

48. All checks shall bear a stale date 90 days from the date of issue. All distributions will be on terms providing that checks not cashed within 90 days after distribution shall be void, unless the deadline for cashing checks is extended by the IDC. The Escrow Bank shall be instructed to stop payment on checks or otherwise assure that payment on checks is prevented for checks not cashed within the deadline established by the IDC. The proceeds of stale and voided checks shall be treated as “undistributed” for purposes of this Distribution Plan, and processed pursuant to paragraph 55 below.

Information Mailing to Accompany Payments

49. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a link to a web site that will provide a description of the tax information reporting and other related tax matters; (c) a statement that checks will be void after 90 days; and (d) the name of a person to contact in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Fund established by the SEC.

Support Services for Investors

50. The Fund Administrator will provide customer support and communications programs which will become active at least by the time the first distribution occurs to IDFs or Eligible Investors from the Fund. These services will include a toll-free call center for Eligible Investors, and a website for the public. The Commission staff retains the right to review and approve any material posted on the website.

Procedure for Handling Returned Checks

51. Returned mail and checks will be handled as follows.
- a. All mail returned by the United States Postal Service (“USPS”) for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to the new address. The database will be updated with the new address. All mail returned by the USPS for the first time, without a new forwarding address, will be coded as returned mail, the check will be voided, and current address information forwarded to a nationally recognized address search service for address research. If a new address is found, that address will be updated to the master database and a new check will be issued. This new check may be issued with a stale date of 30 or 60 days after issuance. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered, subject to a presumption that the additional costs of distribution will not exceed the amount to be distributed.
 - b. All mail returned by the USPS from a second attempt mailing, for which a new forwarding address has been provided by the USPS, will be immediately repackaged and sent to that new address. The master database will be updated with the new address.
 - c. All mail returned by the USPS from a second attempt mailing, without a new forwarding address, will be coded as returned mail and the check will be voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered, subject to a presumption that the additional costs of distribution will not exceed the amount to be distributed.

Under the IDC’s direction, this procedure for handling returned checks will be validated.

No Claims-Made Process

52. This Fund is not being distributed according to a claims-made process, and therefore the procedures for making and approving claims are not applicable.

Provision for Management and Distribution of Fund Monies

53. Upon approval of the Plan, the Fund Administrator shall establish an account at the Escrow Bank, in the name of and bearing the Taxpayer Identification Number of the QSF (the "QSF account") as custodian for the beneficiaries of the Plan. The name of the account

shall be in the following form: American Skandia Distribution Fund TIN number, as custodian for the benefit of investors allocated distributions in accordance with the American Skandia Distribution Plan. The Fund Administrator shall be the signer on the QSF account, subject to the continuing jurisdiction and control of the Commission.

In order to distribute funds, the IDC will submit a validated list of payees and the payment amounts to the assigned Commission staff, who will seek an order from the Commission to disburse pursuant to SEC Rule 1101(b)(6). The payees and amounts will be validated under the IDC's direction. The validation will state that the list was compiled in accordance with the Plan and provides all information necessary to make a disbursement to each distributee. Unless otherwise directed by the Commission, the Commission staff will seek an Order Directing Disbursement that releases funds to the QSF account based upon the validated list and representation by the Fund Administrator that the checks or electronic transfers will be issued within the next 5 business days after the funds are received in the Escrow Account.

The Fund Administrator shall authorize the Escrow Bank to provide contract holder information to the Tax Administrator. The Fund Administrator shall use the assets and earnings of the Fund to provide payments to Fund beneficiaries.

54. The Escrow Bank will hold Fund assets during the check-cashing period and require use of a positive payment system. Once the Fund assets are transferred from the Bureau of Public Debt to the Escrow Bank, they shall be placed in an escrow account which shall invest and reinvest the escrow property solely in instruments backed by the full faith and credit of the U.S. Government; provided however, that investments in short-term U.S. Treasury securities will not be made through repurchase agreements or other derivative products. This shall be done pursuant to the terms of an escrow agreement that must be acceptable to the staff of the Commission. When checks are presented for payment by recipients of the distribution, and validated by the Fund Administrator, the exact amount necessary to pay such presented checks shall be transferred from the Escrow Account into a distribution account bearing the name and taxpayer identification number of the Fund, and validated presented checks shall be paid from this distribution account. For any payment to be made by wire instruction, the appropriate funds will be distributed by the Escrow Bank directly to the payee in accordance with written

instructions provided to the Escrow Bank by the Fund Administrator. The Escrow Bank maintains a Financial Institutions (FI) Bond, including errors and omissions coverage with a per occurrence and aggregate limit of \$50 million and a bankers blanket bond of \$50 million. The primary insurer is St. Paul Mercury Insurance Company, a company which, as of its most recent renewal, was rated “A+” by A.M. Best. The Escrow Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. The Escrow Bank limits are reviewed annually by the company’s Board of Directors.

Termination and Provision for Disposition of Undistributed Funds

55. Fund monies that remain undistributed because distributions to Eligible Investors were not cashed will be distributed to the asset base of the IDF(s), or successor IDF(s), in which the Eligible Investors were invested.

56. The Fair Fund shall be eligible for termination, and the Fund Administrator appointed by the Commission shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Escrow Account of the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall arrange for the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and shall seek an order from the Commission to terminate the Fair Fund and discharge the IDC and the Fund Administrator.

IV. ADMINISTRATION OF THE FUND

A. Appointment of Administrator for the Fund

57. The Commission’s Order requires that the IDC submit the Distribution Plan “for the distribution of all of the disgorgement and penalties ordered in Section IV of this Order”.²⁶ Accordingly, the IDC has proposed the retention of Rust Consulting, Inc., a services company

²⁶ Order at ¶ 27.

well experienced in the distribution and administration of market timing fair funds, to act as the Fund Administrator (“Fund Administrator”). The Respondent will pay all fees and costs associated with the administration of the Plan of Distribution, including the fees of the Fund Administrator.

58. The Fund Administrator, working with the IDC, will be responsible for, among other things: assisting in the administration of the Fund, obtaining accurate mailing information for contract holders; preparing periodic accounting; cooperating with the Tax Administrator in providing the information necessary for income tax compliance; distributing money from the Fund to contract holders in accordance with this Plan; and setting up and staffing a call center to address contract holder questions or concerns regarding the distribution.

59. While the distribution is being implemented, the Fund Administrator will file an accounting during the first ten days of each calendar quarter on a standardized accounting form provided by the Commission staff. The Fund Administrator will submit a final accounting for approval by the Commission prior to termination of the Fund and discharge of the IDC and Fund Administrator.

60. In lieu of bond, the Fund Administrator maintains and will continue to maintain insurance until termination of the Fund. The current primary insurer, Illinois Unions Ins. Co. (ACE USA), is a company which, as of its most recent renewal, was rated “A+” by A.M. Best. The Fund Administrator maintains and will continue to maintain until termination of the Fund, errors and omissions coverage in the amount of \$10,000,000. It has a policy limit of \$10,000,000 per occurrence and an overall limit of \$10,000,000 during the life of the policy. The Fund Administrator also maintains an additional \$10,000,000 in excess errors and omissions coverage, which is provided by Lloyd's of London. Lastly, the Fund Administrator maintains a crime policy in the amount of \$5,000,000 per occurrence, which provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment or delivery of funds as a result of fraudulent input, preparation or modification of computer instructions, data or fraudulent electronic transmissions or communications. Under the Plan of Distribution, at no time will there be funds under the custody of the Fund Administrator, and the Fund

Administrator will have only limited control over the funds. These policies have been provided to the Commission staff for review and have been deemed "not unacceptable."

61. Because (1) the Fund Administrator will have no custody, and only limited control, of the Fund; (2) the Fund will be held by Treasury until immediately before transmittal of checks or electronic transfers to Eligible Investors; (3) upon transfer from Treasury, funds will be held in an escrow account, separate from Escrow Bank assets, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account; (4) presented checks or electronic transfers will be subject to "positive pay" controls before being honored by the Escrow Bank; and (5) both the Escrow Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud, a waiver of the requirement that a bond be posted pursuant to Rule 1105(c) is requested for good cause shown.

B. Appointment of the Tax Administrator

62. The Commission has appointed Damasco & Associates LLP as the Tax Administrator ("Tax Administrator") of the Fund.²⁷ The IDC, Fund Administrator, and Respondent will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling, and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator will request the necessary funds from the staff of the SEC to pay the tax liability of the Fund. Taxes will be paid from the interest income accrued by the Fund, and if the tax liability exceeds the interest income accrued by the Fund, then the remainder of the tax liability will be paid from the corpus of the Fund. The Tax Administrator shall be compensated by the Respondent.

C. Control of the Fund

63. Pursuant to the Order, on or about April 17, 2009, Respondent paid a total of \$68 million to the SEC. The Fund is currently deposited at the U.S. Treasury Bureau of Public Debt. The Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1

²⁷ See *Order Appointing Tax Administrator*, SEC Release No. 59984, May 27, 2009.

through 1.468B-5. The assets of the Fund are subject to the continuing jurisdiction and control of the Commission.

D. Amendment and Notices

Plan Amendments

64. The IDC and Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Plan. The IDC will inform the Commission staff of any changes needed in the Plan. Upon agreement with Commission staff, the IDC may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party or the Fund Administrator or upon the Commission's own motion. For good cause shown, the Commission staff may extend any of the procedural dates set forth in this Plan.

65. This Distribution Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.