

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding File No. 3-12936

In the Matter of

Heartland Advisors, Inc., William J. Nasgovitz, Paul T. Beste, Thomas J. Conlin, Greg D. Winston, Kevin D. Clark, Kenneth J. Della, and Hugh F. Denison,

Respondents.

**PROPOSED PLAN OF
DISTRIBUTION**

OVERVIEW

This Proposed Plan of Distribution (the “Plan”) has been developed pursuant to the Commission’s Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b)(4), 15(b)(6) and 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (Rel. No. 33-8884), dated January 25, 2008 (the “Order”). Simultaneously with the entry of the Order, the Commission accepted settlement offers from Respondents Heartland Advisors, Inc. (“Heartland Advisors”), William J. Nasgovitz, Paul T. Beste, Thomas J. Conlin, Greg D. Winston, Kevin D. Clark, Kenneth J. Della, and Hugh F. Denison (collectively “Respondents”) in which Respondents

consented to the entry of the Order without admitting or denying the findings therein, except as to jurisdiction.¹

The Order stems from Heartland Advisors' mispricing of certain bonds owned by certain mutual funds of Heartland Group, Inc. ("Heartland Group") and its failure to effectively communicate to the Heartland Group's Board of Directors, and to investors, important facts concerning Heartland Advisors' efforts to evaluate bond issuers. The Order requires that the Respondents pay disgorgement, prejudgment interest, and civil penalties totaling \$3,907,095. In accordance with the Order, Respondents paid \$3,907,095, and a Fair Fund was created for the disgorgement, prejudgment interest, and civil penalties. This Plan provides for the distribution of the \$3,907,095, plus interest, less expenses.

The Plan is subject to the notice and comment procedure set forth in the final paragraph below. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over implementation of the Plan.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Settlement Description

1. Heartland Advisors was founded in 1982 and maintains its principal place of business in Milwaukee, Wisconsin. Heartland Advisors has been registered with the Commission as an investment adviser since 1983. Heartland Advisors managed Heartland Group's High-Yield Municipal Bond Fund and Heartland Group's Short Duration High-Yield Municipal Fund (collectively, the "Funds") until the Commission obtained an order placing the Funds into receivership in March 2001.

¹ The Order is published at <http://sec.gov/litigation/admin/2008/33-8884.pdf>. The Distribution Plan is for the sole purpose of effectuating the settlement agreement embodied in the Order. The Distribution Plan does not purport to make findings of fact or conclusions of law.

2. On January 25, 2008, Respondents consented to the entry of the Order, without admitting or denying the findings therein, except as to jurisdiction.

3. The Order requires, among other things, payments by Respondents totaling \$3,907,095 into a Fair Fund established pursuant to §308 of the Sarbanes-Oxley Act of 2002. The Fair Fund is to be distributed for the benefit of shareholders of the Funds as of 4:30 p.m. Eastern Time on October 13, 2000 (the “Effective Time”), not including Respondents and certain other persons affiliated with the Respondents.

4. Respondents paid to the Commission the monies called for under the Order comprised of disgorgement in the amount of \$49,111, prejudgment interest in the amount of \$22,984 and penalty in the amount of \$3,835,000. The Commission currently has continuing jurisdiction and control over the Fair Fund. The Fair Fund has been deposited at the U.S. Treasury Bureau of Public Debt (“BPD”) for investment in government obligations. Other than interest from those investments, it is not anticipated that the Fair Fund will receive additional funds.

B. Appointment of Fund Administrator

5. Rust Consulting, Inc. (“Rust Consulting”), a wholly owned subsidiary of SOURCECORP, is proposed to act as the administrator of the Fair Fund (“Fund Administrator”). Rust Consulting was founded in 1976 and has provided administration services for over 1,000 class action settlements. Rust Consulting has provided administrative services in a number of Commission actions.

6. Rust shall be entitled to reasonable fees in accordance with the proposal submitted to the Commission.

7. Heartland Advisors shall pay all fees and costs associated with the administration of the Plan, including the fees of the Fund Administrator.

C. Bond

8. Because the Fund Administrator is not a Commission employee, Rule 1105(c) requires that it “obtain a bond in the manner prescribed in 11 U.S.C. 322, in an amount to be approved by the Commission.” After Plan approval, the Fund Administrator will obtain the required bond from Hartford Fire Insurance Company (“Hartford”) in the amount of \$3,907,095, which satisfies the bond requirement of Rule 1105(c). Hartford is rated A+ by A.M. Best.

D. Appointment of Tax Administrator

9. The Commission has appointed Damasco & Associates as the Tax Administrator of the Fair Fund (“Tax Administrator”). Exchange Act Release No. 57651 (April 11, 2008). The Fund Administrator and Respondents shall cooperate with the Tax Administrator in providing information necessary to accomplish the work relating to the Fund Administrator’s income tax compliance and any other tax-related work assigned to the Tax Administrator by the Commission Staff.

10. All fees and expenses of the Tax Administrator in connection with the Plan shall be borne by Heartland Advisors. Taxes incurred from the Plan shall be paid first from the interest earned on the funds, and if the interest is not sufficient, then from the corpus.

E. Duties of Fund Administrator

11. Rust will be responsible for, among other things: overseeing the administration of the Fair Fund, obtaining accurate mailing information for shareholders, preparing accountings, cooperating with the tax administrator in providing the information necessary to accomplish the income tax compliance, distributing money from the Fair Fund to shareholders in accordance

with this Plan, and setting up and staffing a call center to address shareholder questions or concerns regarding the distribution.

12. Rust will have no discretion with respect to the allocation of the Fair Fund because payment amounts will be determined and paid in accordance with the process set forth below.

13. Heartland Advisors will calculate the distribution amount for each Eligible Shareholder Account. Rust will receive, review, and verify all computations supporting the proposed distribution amounts from Heartland Advisors and certify that such calculation was done according to the Plan and is accurate.

14. Rust shall ensure that sufficient amounts are withheld from the Fair Fund to satisfy any tax liability and to pay the Tax Administrator's fees and reimbursable costs.

II. DEFINED TERMS

15. This Plan uses a number of terms that have specific meanings and references for purposes of this Plan:

- a. "Date of Distribution" is as soon as practicable after Commission approval of the Distribution Plan, as discussed in paragraph 40, below.
- b. "Effective Time" means 4:30 p.m. Eastern Time on October 13, 2000.
- c. "Eligible Shareholder Account" means the record holder of shares of either or both of the Funds as of 4:30 p.m. E.S.T. on October 13, 2000. Excluded are accounts held by or for the benefit of Respondents; affiliates of the Respondents; individuals who were officers, directors, partners, principals or employees of the Respondents at any time on or after inception of the Funds on January 2, 1997; the members of the immediate family of any person described above (spouse and children);

and the legal representatives, heirs, successors-in-interest or assigns of any person described above.

d. "Fair Fund" means the \$3,907,095 paid by Respondents pursuant to the Order, plus accumulated interest, less any federal, state, or local taxes on the interest.

e. "Fund Administrator" means Rust Consulting, proposed by the Commission to administer the Distribution Plan in accordance with the Commission's Rules on Fair Fund and Disgorgement Plans.

f. "Funds" mean Heartland Group's High-Yield Municipal Bond Fund and Heartland Group's Short Duration High-Yield Municipal Fund.

g. "Order" means the Order entered on January 25, 2008.

h. "Omnibus Accounts" are Eligible Shareholder Accounts in which a financial institution is the shareholder of record, serving as an intermediary, and holding shares on behalf of clients who are the beneficial owners. Accounts of Retirement Plans, as defined below, are not considered Omnibus Accounts for purposes of this Plan, although a Retirement Plan could be a shareholder (of record or otherwise) with other shareholders within an Omnibus Account.

i. "Retirement Plan" as used in this Plan means an Eligible Shareholder Account that is 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 Account (IRA), whether or not the plan is subject to Title I of ERISA. Under the Plan, IRA retirement plans are treated as "Omnibus Accounts", and distributions to IRAs will be made in accordance with paragraph 18 of this Plan.

j. “QSF” and “QSF account” mean 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 through 1.468B-5..

III. DISTRIBUTION PLAN AND PROCEDURES

A. Implementation of Plan

16. There are a number of features and considerations pertaining to this Fair Fund that influenced the development of the Plan, including the following:

a. There is an overriding goal of distributing as much of the Fair Fund as possible to shareholders of the Funds as of the Effective Time, not including Respondents and certain other persons affiliated with Respondents, on such a basis so that all these shareholders can participate in proportion to the net asset value reductions to their accounts on October 13, 2000, subject only to the factors set forth in this Plan.

b. This Fair Fund is not being distributed according to a claims-made process, and the Plan does not impose upon shareholders the need and burden to go through a claim process. As a result, the procedures set forth in the Commission’s Rules of Practice for providing notice and for making and approving claims do not apply to this Plan.

c. Heartland Advisors, based upon the due diligence it has performed, through the use of Heartland Advisors’ shareholder records and other records to which it has access has determined the qualifying shareholders. This information has been provided to Commission Staff for review.

B. Fair Fund Allocation

17. The calculation described herein was based on a listing of the Eligible Shareholder Accounts of the Funds as of the Effective Time prepared by Heartland Advisors from its own records and other records to which it had access. The allocable share of the Fair Fund for each Eligible Shareholder Account was calculated based on the Eligible Shareholder Accounts' relative share of the net asset value reduction in the Funds on October 13, 2000 that was reflected in the Eligible Shareholder Accounts as of the Effective Time, subject to the *de minimis* amount of \$10 set forth in paragraph 21, below. The average payment expected to be made to Eligible Shareholder Accounts is \$2,390. Commission Staff has reviewed the allocation of the Fair Fund among the Eligible Shareholder Accounts and has concluded that the allocation is fair and reasonable. The Fair Fund will be distributed to the Eligible Shareholder Accounts or their successors in interest.

18. The intent of this Plan is to distribute funds through intermediated accounts to beneficial owners.

a. If the aggregate amount due to the Omnibus Account is less than \$1,000, it will be considered a *de minimis* amount, and the Fund Administrator will so inform the shareholder of record.

b. If the aggregate amount due to the Omnibus Account is \$1,000 or more, the Fund Administrator will provide the method for calculating the individual payments to the Omnibus Accountholder, but the Omnibus Accountholder will calculate the payments to beneficial owners according to the methodology provided by the Fund Administrator and execute the distributions to beneficial owners. The Fund Administrator shall issue a single payment to the Omnibus Accountholder for the total

amount to be distributed. The Omnibus Accountholder will bear all costs of the calculation and the distribution.

c. Before issuing the single payment, the Fund Administrator will ask the Omnibus Accountholder to certify that the Omnibus Accountholder will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to disburse the Fair Fund payment to its affected beneficial owners in accordance with the methodology and the deadlines set forth in this Plan, and that the Omnibus Accountholder will return any undistributed money to an account that has been established to hold otherwise undistributed funds for ultimate disposition in accordance with this Plan. After the Omnibus Accountholder has distributed the funds in this fashion, the Omnibus Accountholder will be required to provide the Fund Administrator with a certification that it has complied with these terms and conditions. The Fund Administrator will maintain records of each attempt to contact an Omnibus Account and each response received, if any. These records will be provided to Commission Staff at least 30 days before the scheduled distribution is to be made. In such cases, the amount of Fair Fund allocated to such Omnibus Account shall be treated as “undistributed” for purposes of the Distribution Plan and processed pursuant to paragraph 20, below.

d. The Omnibus Accountholder will be required to develop and execute a program similar to that described for Eligible Shareholder Accounts, including a *de minimis* amount no larger than \$10 for the beneficial owner.

i. For current accounts, the Omnibus Accountholder has the option to write a check or to credit the account of the beneficial owner.

ii. If an Omnibus Accountholder is unable to identify a beneficial owner after receipt of the payment from the Fund Administrator, such beneficial owner's payment shall be returned to the Fund Administrator and will be added to the residual for distribution as detailed below.

iii. In the course of calculating payments in the distribution phase of this Plan, Omnibus Accountholders may determine that payments due to an Omnibus Account's beneficial owners may differ from the amounts calculated pursuant to paragraph 18.c of this Plan. If the Fund Administrator's payment to an Omnibus Accountholder exceeds the payments due to beneficial owners (e.g., there are beneficial owners who fail to meet the investor *de minimis* threshold of \$10), the excess will be added to the residual for distribution as detailed below. If the Fund Administrator's payment to an Omnibus Accountholder is less than the payments to a plan's beneficial owners that exceed the *de minimis* levels (e.g., due to netting at the Omnibus Account level that obscured damages due to beneficial owners), the amount distributed to those beneficial owners will be proportional to the funds actually received by the Omnibus Accountholder.

e. Omnibus Accountholders who seek to alter any of the procedures described herein above may apply to do so in writing to the Fund Administrator within 90 days of receiving notice from the Fund Administrator. Any such application should explain (a) the alteration in procedure they plan to employ and (b) the reasons for this request. The Fund Administrator will rule on these requests within 90 days of their

receipt, but may request additional information from the provider. If the Fund Administrator determines that the proposal would serve the intent and purpose of the Plan to get funds to beneficial owners, the proposal will be accepted. Otherwise, if an Omnibus Account does not choose to make a distribution to beneficial owners pursuant to one of the provisions outlined in paragraphs 18.a. through 18.d above, then the monies that would have otherwise been owed to the Omnibus Account will be added to the residual.

f. For each Omnibus Account that does not make a distribution to beneficial owners pursuant to one of the provisions in paragraphs 18.a. through 18.e. above, the Fund Administrator will keep record of its contact made with the Omnibus Account, and any responses made by the Omnibus Account. These records will be provided to the Commission Staff within 30 days before the scheduled distribution is to be made. In such cases, the amount of Fair Fund allocated to such Omnibus Account shall be treated as “undistributed” for purposes of the Distribution Plan and processed pursuant to paragraph 20 below.

19. 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. 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 account

administered by such intermediary according to the procedures set forth below or according to the average share or dollar balances of the Retirement Plans' investment in the Funds at the Effective Time, 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:

- i. Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in paragraph 17. The Fund Administrator will make this methodology available to Retirement Plan fiduciaries.
- ii. Retirement Plan fiduciaries may allocate the distribution *pro rata* (based on total account balance) among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- iii. Retirement Plan fiduciaries may allocate the distribution *per capita* among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees).
- iv. 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 Retirement Plans, plan fiduciaries and/or intermediaries will not be reimbursed the costs and expenses associated with administering the distribution received pursuant to this Plan.

20. A residual within the Fair Fund is established for any amounts remaining after all assets have been disbursed. The residual may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, distributions from checks that were not delivered or accepted upon delivery, and tax refunds. Any remaining funds in the residual shall be paid to the Commission for transfer to the United States Treasury after the final accounting is approved by the Commission.

C. De Minimis Amounts

21. The allocation described above in paragraph 17 does not include any de minimis distribution for an Eligible Shareholder Account which is less than \$10.00. Any such de minimis amount will be allocated to the other Eligible Shareholder Accounts in accordance with the procedure outlined above in paragraph 17. While there are 1635 Eligible Shareholder Accounts, there are 52 accounts which will be excluded from receiving a distribution as a result of the de minimis threshold.

D. Fair Fund Control

22. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Fair 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 through 1.468B-5. All QSF account expenses, if any, shall be borne exclusively by Heartland Advisors and not deducted from or charged to the Fair Fund.

23. Upon approval of the Plan, pursuant to an Escrow Agreement provided by and approved by Commission Staff, the Fund Administrator shall establish an Escrow Account and either an unfunded Controlled Distribution Account or a Managed Distribution Account at Citizens Bank in Plymouth Meeting, Pennsylvania, in the name of and bearing the Employer Identification Number (“EIN”) of the QSF as custodian for the distributees of the Plan. The name of each account shall be in the following form: Heartland et al Settlement Fund, [EIN No.], as custodian for the benefit of investors allocated a distribution from Heartland Advisors Plan of Distribution.

24. Prior to the receipt of any funds into the QSF account, Citizens Bank shall provide the Fund Administrator an attestation, in a form acceptable to the assigned Commission Staff, that all funds in the QSF account will be held for the Plan and that Citizens Bank will not place any lien or encumbrance of any kind upon the funds.

25. The Fund Administrator or its agent shall be the signer on the QSF account and the Controlled Distribution Account, subject to the continuing jurisdiction and control of the Commission.

26. Citizens Bank will hold the Fair Fund assets during the check-cashing period. Citizens Bank maintains a Bankers Blanket Bond, which includes errors and omissions coverage with per occurrence and single aggregate limits of \$500 million. The primary insurers are National Union Fire Insurance Company, a unit of American International Group, Inc., and Liberty Mutual, both of which as of their most recent long term issue rating were rated A with A.M. Best. Citizens Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data. The Bank’s board of directors annually approves the limits for

the bond and directors and officers liability policies. Documentation has been provided to the assigned Commission Staff to support the foregoing representations.

27. The Fund Administrator shall authorize Citizens Bank to provide account information to the Tax Administrator, including providing duplicate statements for the QSF account. The Fund Administrator shall use the assets and earnings of the Fair Fund to provide payments to the investors and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs

28. Upon transfer from the BPD, the assets of the Fair Fund will be held in the Escrow Account, separate from the Bank's assets, until presentation of a check. Presented checks will be subject to "positive pay" controls before they are honored by the Bank, at which time funds will be transferred from the Escrow Account to the Controlled Distribution Account to pay the approved checks.

29. The Escrow Account shall be invested in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government of a type and term necessary to meet the cash requirements of the payments to Recipient Funds, tax obligations, and fees; provided however, that investments in the U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

E. Procedures for Distributing Funds

30. In order to distribute funds, the Fund Administrator will submit a Validated Payment List identifying payees and the payment amounts to the assigned Commission Staff, who will seek an order from the Commission to disburse pursuant to Rule 1101(b)(6). The payees and amounts will be validated by the Fund Administrator. The validation will state that the list was compiled in accordance with the Plan and provides all information necessary to make

disbursement to each participant. Unless otherwise directed by the Commission, the Commission Staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the Fund Administrator based upon the validated list.

31. All checks will be issued by Citizens Bank. All physical checks shall bear a stale date of one hundred and twenty (120) days from the date of issue. If any physical check is not negotiated by its stale date, that check shall be void and the Fund Administrator shall instruct Citizens Bank to delete the check from the register.

32. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (1) a description of the distribution; (2) a statement of the relevant tax matters, including relevant tax information reporting matters; (3) a statement that checks will be void after one hundred and twenty (120) days; and (4) the name and contact information of a person to contact in the event of any questions regarding the distribution. Prior to disseminating the communication, the Fund Administrator will submit it to the Commission Staff for review and approval. Distribution checks, on their face, or the related communication will clearly state that the money represented by the check is being distributed from a Fair Fund established by the Commission.

33. The Fund Administrator is responsible for accounting for all payments and transactions related to the Fair Fund, including any distribution checks that expire uncashed. The Fund Administrator is responsible for researching and reconciling all returned items due to non-delivery, insufficient address, and/or any other deficiencies and shall issue new checks where appropriate.

34. The Fund Administrator will provide customer support and communications services which will become active at least by the time the first distribution occurs. These

services will include a toll-free number and a website. The Commission retains the right to review and approve any material posted on the website.

F. Procedures for Handling Returned Checks

35. The overall goal for the distribution process is to distribute the Fair Fund to the Eligible Shareholder Accounts entitled thereto as quickly and as efficiently as possible and to minimize the amount of money from the Fair Fund that is not distributed to the Eligible Shareholder Accounts. A physical check will be mailed by the Fund Administrator to the last known address of each Eligible Shareholder Account after the Fund Administrator has compared that address to an address validation system.

36. If any physical check is returned as “undeliverable,” the Fund Administrator will conduct a database search for that Participant through Information Resource Service Company, or a comparable service such as Lexis/Nexis, within fourteen (14) business days after receipt of such returned check. The Fund Administrator will mail a new physical check to the last known address, if any, obtained through such database search. If such physical check is not negotiated by its stale date, that check shall be void and the Fund Administrator shall instruct Citizens Bank to delete the check from the register. All checks issued under this and the following paragraph shall bear a stale date no later than 120 days from the date of issue (“Date of Distribution”).

37. If any money remains in the Fair Fund 120 days after the Date of Distribution, the Fund Administrator shall make reasonable efforts to contact Eligible Shareholder Accounts who have failed to negotiate any checks over \$50.00 (other than physical checks returned as “undeliverable”) and take appropriate action to reissue any such checks as needed. If any checks remain uncashed 180 days after the Date of Distribution, the Fund Administrator shall void all such checks and distribute the remaining funds as set forth in paragraph 41 below.

G. Procedures for Handling Disputes

38. Disputes shall be limited to matters relating to the calculation of the amount of distribution to Eligible Shareholder Accounts. All disputes must be submitted in writing, along with any supporting documentation, to the Fund Administrator. All disputes must be submitted within ninety (90) days of the Date of Distribution. Following an investigation of the dispute, including a review of the written dispute and any supporting documentation, within thirty (30) days within receipt of the dispute, the Fund Administrator shall notify the person submitting the dispute of the Fund Administrator's resolution of the dispute, which shall be final.

H. Fund Initiation and Termination

39. Unless otherwise ordered by the Commission, the Date of Distribution will be as soon as practicable after Commission approval of the Distribution Plan, but in no event more than thirty (30) days thereafter.

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

I. Accountings

41. Once the Fair Fund is transferred from the BPD to Citizens Bank, the Fund Administrator will file an accounting with the Commission during the first ten days of each calendar quarter on a standardized accounting form provided by the Commission Staff and will submit a final accounting for Commission approval pursuant to paragraph 40.

J. Amendments

42. The Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Plan. Where the Fund Administrator deems necessary, after agreement with Commission Staff, the Fund Administrator may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed material by Commission Staff, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. The Respondents will cooperate fully with the Fund Administrator and with all other parties referenced in this Plan in an effort to ensure the appropriate distribution of funds pursuant to the Plan.

43. For good cause shown, the Commission's Staff may extend any of the procedural deadlines set forth in the Plan.


K. Notice and Comment Period

44. In accordance with 17 CFR 201.1101(b)(3), notice of this Plan shall be published in the *SEC Docket*, on the Commission's website [<http://www.sec.gov>], and on Heartland Advisors' website [<http://www.americasvalueinvestor.com/fa/>]. Any person or entity wishing to comment on the Plan must do so in writing by submitting his, her or its comments within thirty (30) days of the publication date of the Notice of Proposed Distribution Plan and Opportunity for

Comment (1) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, DC, 20549-1090; (2) by using the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (3) by sending an e-mail to rule-comments@sec.gov. Comments submitted by letter, by e-mail, or by the Commission's website should include the Administrative Proceeding File Number "Admin. Proc. File No. 3-12936" in the subject line. Comments received by the Commission will be made available to the public. Commenters should only submit information that they wish to make publicly available.

Respectfully submitted,

Submitted on: 1/28/2010

By: 

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