

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20150**

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<b>In the Matter of</b>	:	
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<b>Securities America Advisors, Inc.</b>	:	<b>PLAN OF DISTRIBUTION</b>
	:	
<b>Respondent.</b>	:	
	:	

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**I. OVERVIEW**

1. The Division of Enforcement submitted this Plan of Distribution (the “Plan”) to the United States Securities and Exchange Commission (the “Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”), 17 C.F.R. § 201.1101. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Securities America Advisors, Inc. (“Respondent” or “SAA”) in the above-captioned matter.<sup>1</sup>

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Respondent’s conduct described in the Order, in connection with Respondent’s failure to implement policies and procedures that required SAA investment advisor representatives (“IARs”) to have an adequate basis for recommending suitable investments to their clients. In addition, the Order found that SAA failed to adopt reasonably designed policies and procedures directed specifically at volatility-linked exchange-traded products (“ETPs”). Based on information obtained by the Commission staff during its investigation and the review and analysis of applicable records, the Commission staff has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process, so procedures for making and approving claims in accordance with Rule 1101(b)(4) of the Commission’s Rules, 17 C.F.R. § 201.1101(b)(4), are not applicable.

3. As calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A), investors will be compensated for net losses in their retail advisory accounts managed by SAA IARs on VelocityShares Daily Inverse VIX Short Term ETNs linked to the

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<sup>1</sup> See 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, Advisers Act Rel. No. 5627 (Nov. 13, 2020) (the “Order”).

S&P 500 VIX Short-Term Futures Index (“XIV”) and/or ProShares VIX Short-Term Futures ETF (“VIXY”) (collectively, the “Securities”) during the period from January 1, 2016 through February 28, 2018 (the “Relevant Period”), plus reasonable interest.

4. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Fair Fund.

5. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Plan has been approved by the Commission, and the Commission retains jurisdiction over its implementation.

## **II. BACKGROUND**

6. On November 13, 2020, the Commission issued the Order instituting and simultaneously settling administrative and cease-and-desist proceedings against the Respondent. In the Order, the Commission found that during the Relevant Period, SAA IARs invested clients in, or recommended for their clients, XIV and VIXY, which are volatility-linked ETPs. Throughout the Relevant Period, SAA failed to adopt and implement policies and procedures reasonably designed to prevent investments in, and recommendations of, volatility linked ETPs such as XIV and VIXY that were not suitable for SAA clients. The offering materials for XIV provided that the product was for sophisticated investors to manage daily trading risks, and the offering materials for VIXY similarly provided that that product was for investors who understood the consequences of seeking exposure to VIX futures contracts and was for short-term investment horizons. SAA had no policies and procedures directed specifically at volatility-linked ETPs, even though it knew that certain of its IARs were investing in XIV and VIXY on behalf of retail clients or were recommending that retail clients buy and hold the products for extended periods. During the Relevant Period, SAA client accounts held XIV or VIXY for an average of 32 days, and the total losses to clients who suffered losses from investments in XIV and VIXY were significant.

7. The Commission ordered Respondent to pay \$3,399.42 in disgorgement, \$377.40 in prejudgment interest, and \$600,000 in civil money penalties, for a total of \$603,776.82, to the Commission. The Commission also created the Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the penalties paid, along with the disgorgement and interest paid, can be distributed to harmed investors. Pursuant to the Order, the Respondent shall pay all administrative costs and expenses, including but not limited to, taxes and the fees and expenses of a fund administrator and tax administrator.

8. Respondent has paid in full. The Fair Fund, consisting of the \$603,776.82 paid by Respondent in accordance with the Order, has been deposited at the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”) for investment.

## **III. DEFINITIONS**

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

9. **“Administrative Costs”** means any administrative costs and expenses, including without limitation the fees and expenses of the Tax Administrator and the Fund Administrator, bond premiums, tax obligations and investment and banking costs.

10. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

11. **“Eligible Claimant”** shall mean a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

12. **“Excluded Party”** shall mean: (a) Respondent, or Respondent’s advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) Respondent’s IARs, and their advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (c) the Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as the Fund Administrator; and (d) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

13. **“Fair Fund”** means the \$603,776.82 fund created by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Respondent’s violations described in the Order.

14. **“Final Determination Notice”** means the written notice sent by the Fund Administrator to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 33(f), except those whose Plan Notice was returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim.

15. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings.

16. **“Payee”** means an Eligible Claimant who is determined to receive a Distribution Payment, as calculated in accordance with the Plan of Allocation.

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

18. **“Plan Notice”** means a written notice from the Fund Administrator to each Preliminary Claimant regarding the Commission’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission’s website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed

an Unresponsive Preliminary Claimant; his, her, or its preliminary Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Fund Administrator in order to provide any requested information or to contact with questions regarding the distribution.

19. **“Plan of Allocation”** means the methodology by which a Preliminary Claimant’s Recognized Loss is calculated. The Plan of Allocation is attached as Exhibit A.

20. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Fund Administrator based on its review and analysis of applicable records obtained by the Commission staff during its investigation who may have suffered a loss in a retail advisory account managed by an SAA IAR on transactions in the Securities during the Relevant Period.

21. **“Recognized Loss”** means the amount of loss calculated for a Preliminary Claimant in accordance with the Plan of Allocation.

22. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Fund Administrator has not been able to verify and/or who does not timely respond to the Fund Administrator’s attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### IV. TAX COMPLIANCE

23. On May 21, 2021, the Commission appointed Miller Kaplan Arase LLP as the tax administrator (the “Tax Administrator”) for the Fair Fund to handle the tax obligations of the Fair Fund.<sup>2</sup> The Respondent is responsible for the payment of all reasonable fees and expenses of the Tax Administrator, pursuant to the Order.

24. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund.

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<sup>2</sup> See Order Appointing Tax Administrator, Exchange Rel. No. 91966 (May 21, 2021).

25. All tax obligations will be paid by the Respondent.

## **V. FUND ADMINISTRATOR**

26. On July 16, 2021, the Commission appointed Analytics Consulting, LLC as the fund administrator for the Fair Fund (the “Fund Administrator”), and the Fund Administrator has obtained a bond in the amount of \$603,776.82, as ordered.<sup>3</sup> Pursuant to Rule 1105(a) of the Commission’s Rules, 17 C.F.R. § 201.1105(a), the Fund Administrator may be removed at any time by order of the Commission or hearing officer.

27. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; establishing a website and staffing a call center to address inquiries regarding the Plan; preparing accountings; cooperating with the tax administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Commission; and researching and reconciling errors and reissuing payments, when possible.

28. To carry out the purposes of this Plan, the Fund Administrator is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Plan.

29. The Fund Administrator may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the Commission staff.

30. The Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the Secretary or Director of Enforcement by delegated authority or an Administrative Law Judge; and/or any investor information provided by Commission staff.

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

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<sup>3</sup> See Order Appointing Fund Administrator and Setting Bond Amount, Exchange Act Rel. No. 92426 (July 16, 2021).

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

32. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who invested in XIV and/or VIXY in their retail advisory accounts at SAA managed by an SAA IAR from January 1, 2016 through February 28, 2018.

### Procedures for Locating and Notifying Preliminary Claimants

33. Within sixty (60) days of Commission approval of the Plan, the Fund Administrator will:

- (a) Establish and maintain a website devoted solely to the Fair Fund. The Fair Fund's website will make available a copy of the approved Plan, include a copy of the Plan Notice, and related materials in downloadable form, and such other information that the Fund Administrator believes will be beneficial to Preliminary Claimants.
- (b) Establish and maintain a toll-free telephone number for Preliminary Claimants to call and speak to a live representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear pre-recorded information about the Fair Fund.
- (c) The Fund Administrator will also establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Fund Administrator to Preliminary Claimants as well as on the Fair Fund's website.
- (d) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Fund Administrator, including the last known physical and email addresses.
- (e) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date.
- (f) Send to each Preliminary Claimant's last known email address (if known) and/or mailing address the Plan Notice.

The Commission staff retains the right to review and approve any material posted on the Fair Fund's website and any scripts used in connection with communications with investors.

### Undeliverable Mail

34. If any mailing is returned as undeliverable, the Fund Administrator will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Fund Administrator will then resend it the Preliminary Claimant's new address within fourteen (14) days of receipt of the returned mail. If the mailing is returned again, and the Fund Administrator, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

35. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for Persons whose mailings are returned as undeliverable.

36. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Fund Administrator.

### Procedures to Request Plan Notice

37. Any Person who does not receive a Plan Notice, as described in paragraph 33(f), but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Fund Administrator within ninety (90) days of the approval of the Plan to establish that they should be considered a Preliminary Claimant. The Fund Administrator will send the Person a Plan Notice within fourteen (14) days of receiving the Person's documentation, if the Fund Administrator determines that the Person should have received a Plan Notice.

### Dispute Process

38. Disputes will be limited to calculations of Recognized Losses. Within sixty (60) days of the mailing of the Plan Notice, the Fund Administrator must receive a written communication detailing any dispute along with any supporting documentation. The Fund Administrator will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

### Failure to Respond to Plan Notice

39. If a Preliminary Claimant fails to respond within sixty (60) days from the mailing of the Plan Notice, the Fund Administrator will make no fewer than two (2) attempts to contact the Preliminary Claimants by telephone or email. The second attempt will in no event take place more than ninety (90) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Fund Administrator's contact attempts as described in this paragraph, the Fund Administrator, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

### Final Determination Notices

40. Within one hundred twenty (120) days of the initial mailing of the Plan Notices, the Fund Administrator will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 38 above, notifying the Preliminary Claimant of its resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 39 above, except for those whose Plan Notice was returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

### Distribution Methodology

41. The Fund Administrator will calculate each Preliminary Claimant’s Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant. All Eligible Claimants who are determined to receive a Distribution Payment will be deemed a Payee.

### Establishment of a Reserve

42. Before determining the amount of funds available for distribution and calculating each Payee’s Distribution Payment, the Fund Administrator, in conjunction with the Tax Administrator, will establish a reserve to accommodate any unexpected expenditures (the “Reserve”).

43. After all disbursements are made, any remaining amounts in the Reserve will become part of the Residual described in paragraph 62 below.

### Preparation of the Payment File

44. Within one hundred eighty (180) days of Commission approval of the Plan, the Fund Administrator will compile and send to the Commission staff the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the “Payee List”). The Fund Administrator will also provide a Reasonable Assurances Letter to the Commission staff, representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is accurate as to Payees’ names, addresses, Recognized Losses and amounts of their Distribution Payment; (c) includes the number of Payees compensated; (d) the *pro-rata* applied, if any; (e) the percentage of Recognized Loss being compensated by the Fair Fund; (f) the total amount being distributed; and (g) provides all information necessary to make a payment to each Payee.

### The Escrow Account

45. Prior to the disbursement of the Net Available Fair Fund, the Fund Administrator will establish an escrow account (the “Escrow Account”) with a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D,



12 C.F.R. 208.43 and that is not unacceptable to the Commission staff (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff.

46. The Fund Administrator, pursuant to the Escrow Agreement, shall also establish with the Bank a separate deposit account (e.g. controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”), insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC pass through limit. The Distribution Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

47. During the term of the Escrow Agreement, the portion of the Fair Fund transferred to the Escrow Account (the “Escrow Property”) shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof. The investment shall be, of a type and term necessary to meet the cash liquidity requirements for payments to Payees, including investment or reinvestment in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

48. The Fund Administrator shall provide duplicate original bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

49. The Fund Administrator, in consultation with the Commission staff, shall work with the Bank on an ongoing basis to deposit or invest funds in the Escrow and Distribution Accounts so as to result in the maximum reasonable net return, taking into account the safety of such deposits or investments and tax implications; and to determine an allocation of funds between the Escrow and Distribution Account.

50. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Distribution Accounts will be the responsibility of the Fund Administrator, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

#### Distribution of the Fair Fund

51. Upon the Commission’s staff’s receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter from the Fund Administrator, the Commission staff will seek an Order from the Commission pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 210.1101(b)(6), to disburse funds to the Bank in accordance with the Payee List for distribution by the Fund Administrator in accordance with the Plan. All disbursements will be made pursuant to a Commission Order.

52. Upon issuance of an Order to disburse, the Commission staff will direct the transfer of funds in accordance with the Payee List to the Bank. The Fund Administrator will then use its best efforts to commence mailing Distribution Payment checks and/or effect wire transfers within ten (10) business days of the release of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

53. All checks will be issued by the Fund Administrator from the Distribution Account. All checks will bear a stale date of one hundred twenty (120) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 57.

54. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after one hundred twenty (120) days from the date the original check was issued; and (d) contact information for the Fund Administrator for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

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

#### Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

56. The Fund Administrator shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Fund Administrator as "undeliverable." If new address information becomes available, the Fund Administrator will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than one hundred twenty (120) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Fund Administrator shall instruct the issuing financial institution to stop payment on such check. If the Fund Administrator is unable to find a Payee's correct address, the Fund Administrator, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

57. The Fund Administrator will reissue checks to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a

Distribution Payment check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Fund Administrator, such change request is properly documented, the Fund Administrator will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of one hundred twenty (120) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after one hundred twenty (120) days from the date of the original issuance without the approval of Commission staff.

58. The Fund Administrator will work with the Bank and maintain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Fund Administrator is responsible for researching and reconciling errors and reissuing payments when possible. The Fund Administrator is also responsible for accounting for all payments. The amount of all uncashed payments will continue to be held in the Fair Fund.

59. The Fund Administrator will make reasonable efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Fund Administrator may reissue such checks, subject to the time limits detailed herein.

#### Receipt of Additional Funds

60. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Commission’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan, pursuant to the Commission’s Rules.

#### Disposition of Undistributed Funds

61. If funds remain following the initial distribution, the Fund Administrator, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds, pursuant to the Commission’s Rules

62. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, tax refunds for overpayment or for waiver of IRS penalties.

63. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and transferred to the U.S. Treasury after the final accounting is approved by the Commission. Returning such money to the Respondent would be inconsistent with the equitable principle that no Person should profit from their wrongdoing. Therefore, in these circumstances distributing disgorged funds to the U.S. Treasury is the most equitable alternative.

#### Administrative Costs

64. All Administrative Costs will be paid by Respondent, pursuant to the Order.

#### Accountings

65. In accordance with Rule 1105(f) of the Commission's Rules, during the first ten (10) days of each calendar quarter after funds have been transferred from the BFS to the Bank, the Fund Administrator will file an accounting with the Commission, on a standardized accounting form provided by the Commission staff, of all monies earned or received and all monies spent in connection with the administration of the Plan.

66. Upon completion of all distributions to Payees pursuant to the procedures described above, the Fund Administrator shall transfer all remaining funds to the Commission, and submit a final accounting for approval by the Commission on a standardized form provided by the Commission staff. The Fund Administrator will also submit a report to the Commission staff containing the final distribution statistics regarding distributions to individuals and entities, and such other information requested by the Commission staff.

#### Wind-down and Document Retention

67. The Fund Administrator will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission, or at such earlier time as the Fund Administrator determines with the concurrence of the Commission staff.

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

#### Termination of the Fair Fund

69. The Fair Fund will be eligible for termination and the Fund Administrator will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Fund

Administrator and approved by the Commission; and (b) any amount remaining in the Fair Fund has been returned to the Commission for transfer to U.S. Treasury. Once the Commission has approved the final accounting, the Commission staff will seek an order from the Commission authorizing: (a) the transfer of any Residual remaining in the Fair Fund that is infeasible to return to investors, and any amounts returned to the Fair Fund in the future that is infeasible to return to investors, to the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act; (b) discharge of the Fund Administrator; (c) cancellation of the Fund Administrator's bond; and (d) termination of the Fair Fund.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors for losses in their retail advisory accounts managed by an investment advisory representative (“IAR”) of Respondent on VelocityShares Daily Inverse VIX Short Term ETNs linked to the S&P 500 VIX Short-Term Futures Index and/or ProShares VIX Short-Term Futures ETF (collectively, the “Securities”) during the period from January 1, 2016 through February 28, 2018 (the “Relevant Period”). Investors who did not suffer a loss on the Securities in a retail advisory account managed by an IAR of Respondent during the Relevant Period are ineligible to recover under this Plan. Based upon records obtained by the Commission during its investigation, the Fund Administrator has identified those investors, or their lawful successors, who may have suffered a loss in a retail advisory account managed by one of the Respondent’s IARs on transactions in the Securities during the Relevant Period (the “Preliminary Claimants”). Commission staff economists will perform the calculations described below using transaction-level information obtained by the Commission in the course of its investigation.

The Fund Administrator will calculate each Preliminary Claimant’s loss (“Recognized Loss”) on transactions in the Securities during the Relevant Period by matching the Preliminary Claimant’s transaction-level purchases to sales according to the FIFO Methodology; calculating the difference between the purchase amount and the sale proceeds.

FIFO Methodology: For each Preliminary Claimant who made multiple purchases and sales of Security during the Relevant Period, the transactions will be matched according to the first-in, first-out (“FIFO”) method. The earliest sales during the Relevant Period will be matched first against any holdings at the opening of the Relevant Period. Once the beginning holdings have all been matched, or in the event that the Preliminary Claimant had no beginning holdings, then any further sales will be matched against the earliest Relevant Period purchases and chronologically thereafter.

If the Recognized Loss is less than zero, reflecting a gain, then the Recognized Loss will be \$0.00.

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Order that was received from another source (e.g., private action settlement), to the extent known by the Fund Administrator.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

## **Additional Provisions**

Allocation of Funds: The Net Available Fair Fund, as defined in the Plan, exceeds the sum of Recognized Losses of all Eligible Claimants, therefore, each Eligible Claimant's distribution amount will equal his, her or its Recognized Loss, plus "Reasonable Interest." The distribution amount will be subject to the "Minimum Distribution Amount."

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

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00 (inclusive of Reasonable Interest). If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, he, she, or it will be deemed ineligible to receive a Distribution Payment.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment for his, her, or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her, or its Recognized Loss, plus Reasonable Interest.