



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

RE:

In the Matter of Securities America Advisors, Inc., Admin. Proc. File No. 3-20150

**Distribution Plan Notice**

**The Securities and Exchange Commission authorized this Distribution Plan Notice (“Notice”).  
This is not a solicitation from a lawyer.**

Dear Investor:

This Notice is to inform you of the Securities America Advisors, Inc. Fair Fund (“SAA Fair Fund”) established by the United States Securities and Exchange Commission (“SEC” or “Commission”) with the disgorgement, prejudgment interest, and civil penalty proceeds of an enforcement action against Securities America Advisors, Inc. (“Respondent” or “SAA”). This fund is intended to compensate investors for harm incurred with the 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.

You have been identified as a Preliminary Claimant<sup>1</sup> because you are an individual or entity, or their lawful successor or assign, who may have invested in XIV and/or VIXY, which are volatility-linked ETPs, in your retail advisory account(s) at SAA managed by an SAA IAR from January 1, 2016 through February 28, 2018 (the “Relevant Period”).

To be able to recover from the Securities America Advisors Fair Fund, you must submit a completed Certification Form which must be postmarked **no later than 90 days** from the date of this Notice.<sup>2</sup>

**Fair Fund**

The Fair Fund is comprised of the disgorgement, prejudgment interest, and civil penalties paid by the Respondent. The Fair Fund currently consists of approximately \$603,776.<sup>3</sup>

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Distribution Plan.

<sup>2</sup> You may be excluded from applying for a distribution if you fall within one of the categories outlined in Paragraph 12 of the Distribution Plan. Participation in the distribution of the Fair Fund will not result in the release of any rights or potential claims an investor may have against any party (other than with respect to the Distribution Agent), including, but not limited to, any party’s past and present directors, officers, promoters, advisers, agents, affiliates, nominees, assigns, creditors, or controlled entities.

<sup>3</sup> This amount is approximate.

## Distribution Plan

On March 3, 2022, the Commission approved the Plan of Distribution (“Distribution Plan”). A copy of the Distribution Plan is available to view and download at [www.SAAFairFund.com](http://www.SAAFairFund.com). In addition, you can request a copy of the Distribution Plan from the Fund Administrator by phone, e-mail, or mail:

Securities America Advisors Fair Fund  
c/o Analytics Consulting LLC  
Fund Administrator  
P.O. Box 2002  
Chanhassen, MN 55317-2002  
1-866-590-2876  
[info@SAAFairFund.com](mailto:info@SAAFairFund.com)

## Your Recognized Loss Amount

Your Recognized Loss Amount is based on losses in your retail advisory account(s) managed by an IAR of SAA and is the difference between purchase amount and sale proceeds in XIV and/or VIXY, calculated by matching transaction-level purchases to sales according to the FIFO Methodology.

The Net Available Fair Fund exceeds the sum of Recognized Loss Amounts for all Eligible Claimants. Therefore, the distribution amount will equal his, her or its Recognized Loss, plus “Reasonable Interest.” 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. If an Eligible Claimant’s Minimum Distribution Payment is less than \$10.00, that Eligible Claimant will not receive a Distribution Payment.

### Eligible Claimant's Participation Options for this Fair Fund

In order to receive a payment from the Fair Fund, if you <b>have no Dispute</b> as to your Recognized Loss Amount, you must:	Submit the Certification Form so that it is postmarked <b>no later than 90 days</b> from the date of this Notice.
In order to receive a payment from the Fair Fund, if you <b>have a Dispute</b> as to your Recognized Loss Amount, you must:	Complete the Certification Form and write to the Fund Administrator detailing the reasons for your objection and return it so that it is postmarked <b>no later than 60 days</b> from the date of this Notice.

**IF YOU DO NOT COMPLETE THE CERTIFICATION FORM AND RETURN IT TO THE FUND ADMINISTRATOR WITHIN THE DEADLINES DESCRIBED ABOVE, YOU WILL NOT RECEIVE A DISTRIBUTION PAYMENT**

If you agree with your Recognized Loss Amounts, then certify it is correct on the Certification Form attached hereto (the “Certification Form”) and return it as instructed.

If this amount does not appear to be accurate, then you can dispute the Recognized Loss Amounts (“Dispute”) in Part I of the Certification Form by filling out the amounts you believe to be correct. Please return the signed Certification Form and detail why the calculation is not accurate in two pages or less, double spaced, and attach documentation to support your Dispute.

You must also confirm any changes to the Eligible Claimant’s name, and whether any heirs or successors have taken the place of the original Eligible Investor. You must also provide the address where the Distribution Payment should be sent.

The Certification must be postmarked no **later than 90 days** from the date of this Notice. Any Dispute must be postmarked no **later than 60 days** from the date of this Notice.

The Fund Administrator will notify you of the resolution of your Dispute within **30** days of its receipt in the form of a Final Determination Notice.

## **Background**

This Distribution Plan provides for distribution of funds collected in the above-captioned matter to compensate investors harmed by the conduct that served as the basis for its findings of securities law violations in the Commission's Orders (the "Order")<sup>4</sup> against SAA.

According to the Order, from January 1, 2016 through February 28, 2018, 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.

Securities America Advisors has paid, as ordered, a total of \$603,776.82.

The Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, so the civil money penalty could be distributed to those harmed by the Respondent's conduct described in the Order.

## **Fund Administrator**

On July 16, 2021, Analytics was appointed as the Fund Administrator to assist in overseeing the administration and distribution of the Fair Fund in coordination with Commission staff, pursuant to the terms of the Distribution Plan.<sup>5</sup>

## **Tax Administrator**

On May 21, 2021, Miller Kaplan was appointed as the Tax Administrator by the Commission to handle the tax obligations of the Fair Fund.<sup>6</sup>

**Tax Consequences of Your Distribution Payment.** The Fair Fund is a "Qualified Settlement Fund" ("QSF") as defined in Section 468B(g) of the Internal Revenue Code, 26 U.S.C. Section 468B(g), as amended, and the Treasury regulations promulgated thereunder, 26 C.F.R. 1.468B-1 *et seq.* This distribution is intended to compensate you for losses incurred with respect to your investment as a result of the violations described in the SEC's Complaint. The distribution from this Fair Fund may have tax consequences.

Generally, the losses component of your distribution is not income to you to the extent of your basis in your investment. However, you must reduce your basis by the amount of your distribution. If your distribution exceeds your tax basis in your investment, then the excess is includable in your income as capital gain. Any such capital gain is long-term capital gain unless you disposed of your investment before holding it for longer than one year. If you do not have reasonable access to records indicating the tax basis of your investment, then you may assume that your tax basis is zero and that the entire distribution is includable in your income as capital gain. ***The QSF is not required to - and will not - issue a Form 1099 to you with respect to the losses component of your distribution.***

**Interest Component.** The interest component constitutes taxable interest income to you; however, you will only receive a Form 1099-INT if your distribution contains \$600 or more of such interest. Under certain circumstances, the interest

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<sup>4</sup> Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(r) 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).

<sup>5</sup> Order Appointing Fund Administrator and Setting Administrator's Bond Amount, Exchange Act Rel. No. 92426 (July 16, 2021).

<sup>6</sup> Order Appointing Tax Administrator, Exchange Act Rel. No. 91966 (May 21, 2021).

component may have been subject to 24% backup withholding (as well as state withholding, as applicable). To the extent that the interest component is subject to such withholding, it will be reflected on the Form 1099-INT that will be issued to you (as well as any related state forms, as applicable). If you are, or are presumed to be, a nonresident alien of the U.S. (“NRA”), or a payee subject to withholding under the Foreign Account Tax Compliance Act (“FATCA”), you may receive Form 1042-S with respect to the interest component of your distribution. Your interest component may also have been subject to 30% NRA withholding or 30% FATCA withholding under certain circumstances, which has been remitted to the IRS on your behalf (if applicable). To the extent your interest component is subject to such withholding, it will be reflected on the Form 1042-S that will be issued to you in the first quarter of the year subsequent to the year you receive your distribution payment.

Please note that the Fund Administrator and the Tax Administrator cannot provide tax advice to Eligible Investors. The information contained herein is being provided for informational purposes only to assist you in determining the United States (“U.S.”) federal income tax consequences of the distribution payment if you are a citizen or resident of the U.S. The tax consequences of the distribution may vary depending on your individual circumstances. The information provided herein may not be applicable if you are a nonresident alien of the U.S. or a FATCA-subject payee and it does not address the alternative minimum tax provisions of federal tax law, nor state, local and non-U.S. tax rules, nor the effect of possible changes in laws. ***THE INFORMATION CONTAINED HEREIN IS NOT AND SHOULD NOT BE RELIED UPON AS TAX ADVICE. CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE SPECIFIC TAX CONSEQUENCES OF THE DISTRIBUTION TO YOU.***

### **Participation**

Participation in the Fair Fund will not result in the release of any rights or potential claims an Eligible Claimant may have against any party (other than with respect to the Fund Administrator), including, but not limited to, any party’s past and present directors, officers, promoters, advisers, agents, affiliates, nominees, assigns, creditors, or controlled entities.

### **Questions?**

If you have any questions about the Fair Fund, or the calculation of your Recognized Loss Amount, you may obtain more information by visiting the Fund website at [www.SAAFairFund.com](http://www.SAAFairFund.com) or the SEC’s Information for Harmed Investors webpage at <https://www.sec.gov/divisions/enforce/claims.htm>, by phone at 1-866-590-2876, or by email to [info@SAAFairFund.com](mailto:info@SAAFairFund.com).

### **Reminder Checklist**

- Complete Part I and sign the Certification Form.
- Complete Part II of the Certification Form if you have any changes to the Eligible Investor Information, or the Mailing Address.
- Return the Certification Form so that it is postmarked within 90 days of the date of this Notice if you are not submitting a Dispute; or
- Return the Certification Form with any Dispute to the Fund Administrator by so that it is postmarked within 60 days of the date of this Notice.

Very truly yours,

Analytics Consulting LLC  
Fund Administrator