

## **DISTRIBUTION PLAN FOR AGFEED DISTRIBUTION FUND**

### **INTRODUCTION**

On October 6, 2014, the Commission filed a settled enforcement action against AgFeed Industries, Inc. (“AgFeed” or “Defendant”), alleging that AgFeed reported fictitious revenues from its China operations from 2008 through June 30, 2011 in order to meet financial targets and prop up the stock price. The fraud caused AgFeed’s publicly-reported revenues to be inflated by approximately \$239 million during that period. The Commission alleged, in part, that AgFeed violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13.

Pursuant to the Final Judgment, Defendant was found liable for disgorgement in the amount of \$18,000,000.00, representing profits gained as a result of the conduct alleged in the Complaint. Defendant was obligated to pay (i) \$12,500,000.00 *pro-rata* to holders of Class 5 B equity interests, as defined in AgFeed's July 22, 2014 Second Amended Chapter 11 Plan of Liquidation Supported by the Official Committee of Equity Security Holders in *In re AgFeed Industries, Inc.*, Chapter 11 Case No. 13-11762 (BLS) (Bankr. D. Del.) and (ii) \$5,500,000.00 to the Securities and Exchange Commission, pursuant to a confirmed Chapter 11 Plan of liquidation in the Bankruptcy Case.

On or about November 26, 2014, \$5,500,000.00 was paid to the Commission. The funds were deposited into an SEC-designated account at the United States Treasury. Also on November 26, 2014, a fund (“Distribution Fund”) was established by the Court to compensate investors harmed by the fraud. On October 6, 2015, the Court entered an order appointing a Tax Administrator, Damasco & Associates LLP, to handle the tax obligations

of the Distribution Fund, and appointing Epiq Systems (“Epiq”) as the Distribution Agent for the Fund to assist in overseeing the administration of the distribution of the Distribution Fund in consultation with Commission staff, pursuant to the terms of this Distribution Plan.

## **ARTICLE I**

### **DEFINITIONS**

This Distribution Plan sets forth the method and procedures for distributing the Distribution Fund created in this matter. As used in this Distribution Plan, the following definitions shall apply:

1.1 “Affiliate” shall have the meaning set forth in section 101(2) of Title 11 of the United States Code, 11 U.S.C. § 101(2).

1.2 “Broker Notice Claimant” shall refer to those Potentially Eligible Claimants identified through the Distribution Agent’s outreach to certain banks, brokers and other nominees in accordance with Section 3.17 of this Plan. A Broker Notice Claimant will receive a copy of the Claims Packet and is required to file a valid Proof of Claim Form in order to share in the distribution from the Disgorgement Fund.

1.3 “Claim Deficiency Notice” means the notice sent by the Distribution Agent to a Potentially Eligible Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and provide the opportunity to cure any such deficiencies. A Claim Deficiency Notice shall be provided no later than sixty (60) days after the Claims Bar Date.

1.4 “Claims Bar Date” shall mean the date established in accordance with this Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be received by (for electronic mail) the Distribution Agent or postmarked to avoid the barring of any right

of the Potentially Eligible Claimant to participate in any distribution from the Distribution Fund, or a Class Action SEC Authorized Claimant to modify its claim. The Claims Bar Date shall be one hundred and twenty (120) days after the Notice Date. Claims postmarked after the Claims Bar Date will *not* be reviewed and evaluated, unless the Distribution Agent is explicitly directed by the Commission to process such late claims.

1.5 “Claims Packet” shall mean all the materials to be provided to Potentially Eligible Claimants known to the Distribution Agent or to those who request such prior to the Claims Bar Date. The Distribution Agent, in consultation with the staff of the Commission, shall prepare the Claims Packet, which shall include, at a minimum, a copy of the Plan Notice and a Proof of Claim Form. Claims Packets will be sent to Potentially Eligible Claimants but will *not* be sent to Class Action SEC Authorized Claimants, unless a Class Action SEC Authorized Claimant notifies the Distribution Agent it wants to file a Proof of Claim Form to modify its claim.

1.6 “Class Action SEC Authorized Claimant” shall mean a Person who had a claim in the Class Action and whose claim has an Eligible Loss Amount greater than \$0.00 under the terms of this Plan. A Class Action SEC Authorized Claimant is deemed an Eligible Claimant under this Plan only with respect to those AgFeed common stock shares which were previously authorized in the Class Action. If a Person had a claim in the Class Action which was denied in part for containing only partial documentation that Person will still be considered a Class Action SEC Authorized Claimant with respect to the AgFeed common stock shares for which valid supporting documentation was provided in the Class Action. A Class Action SEC Authorized Claimant shall receive a Notice Letter and is not required to file a Proof of Claim Form to share in the distribution from the Distribution Fund. However, as the Recovery Period for the Distribution Fund is longer, a Class

Action SEC Authorized Claimant may modify or add to his, her or its claim by contacting the Distribution Agent and providing valid supporting documentation for the adjustment, and thereby will be deemed a Potentially Eligible Claimant.

1.7 “Class Action Claimant Ineligible for SEC Payment” shall mean a Person who either (a) filed a claim with the claims administrator in the Class Action but whose claim under the terms of this Plan has an Eligible Loss Amount less than or equal to \$0.00, or (b) filed a claim with the claims administrator in the Class Action whose claim was denied in full for not having valid documentation. A Class Action Claimant Ineligible for SEC Payment will receive a copy of the Claims Packet and is required to file a valid Proof of Claim Form in order to share in the distribution from the Distribution Fund.

1.8 “Class Action” shall mean the class action litigation styled *Blitz v. AgFeed Industries, Inc.*, No. 11-cv-0992, (D. Tenn. Oct. 18, 2011), which arose out of similar violations alleged in the Complaint.<sup>1</sup> The Class Action class period, March 16, 2009 through and including September 29, 2011, was shorter than the Recovery Period in this action, which is March 14, 2008 through December 19, 2011. The court in the Class Action approved the settlement with AgFeed for \$7,000,000. The net proceeds were distributed on a *pro rata* basis to authorized claimants who purchased or otherwise acquired AgFeed common stock. Epiq, the Distribution Agent for this Plan, also served as the claims administrator in the Class Action. The information requested and provided to Epiq for the Class Action claim process included all transactions during the Class Action class period, which included purchases, sales, transfers, conversions, and/or dividend reinvestments, as well as shares held at the beginning and end of the periods. This information is sufficient for Epiq, as Distribution Agent, to apply the Plan of Allocation (see Exhibit A), and to make

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<sup>1</sup> *SEC v. AgFeed Industries, Inc. et. al.*, No. 3:14-cv-00663 (M. D. Tenn. Mar. 11, 2014)

calculations to determine that no Eligible Claimant will receive distribution payments totaling more than his/her/its calculated harm, after taking into account the payment received in the Class Action.

1.9 “Commission” shall mean the United States Securities and Exchange Commission.

1.10 “Days” shall mean calendar days, unless provided otherwise.

1.11 “Determination Notice” shall mean the notice sent by the Distribution Agent to everyone who files a Proof of Claim Form; the Determination Notice states the Distribution Agent’s decision with respect to the validity of the claim. Determination Notices will be mailed after all Proof of Claim Forms have been processed and, where necessary, Potentially Eligible Claimants have been sent a Claim Deficiency Notice and given a chance to respond. The Distribution Agent will not send Determination Notices to Class Action SEC Authorized Claimants, unless they have modified their claim.

1.12 “Distribution Agent” shall mean Epiq (including its employees, agents, consultants or independent contractors), the Distribution Agent appointed by the Court to assist with the administration and distribution of the Distribution Fund in accordance with the terms of this Distribution Plan and the Court’s orders. Epiq’s distribution administration operations are headquartered in Portland, Oregon.

1.13 “Distribution Fund” shall refer to the fund established by the Court’s October 6, 2014 Order, together with any interest earned on those funds or any additions thereto as may be provided by future Court order or agreement in related cases or otherwise.

1.14 “Distribution Payment” shall mean the payment disbursed to an Eligible Claimant based on the Eligible Claimant’s Eligible Loss Amount.

1.15 “Eligible Claimants” shall mean all Class Action SEC Authorized Claimants and those Potentially Eligible Claimants filing a valid Proof of Claim Form with the Distribution Agent who are determined by the Distribution Agent to be eligible for a distribution from the Distribution Fund as provided herein. “Eligible Claimants” in no event shall include:

(a) any director or officer, or former director or officer, of the Defendant, or any of Defendant’s past or present Affiliates who served in such capacity during the Recovery Period and were directly involved in the conduct detailed in the Complaint;

(b) any employee or former employee of Defendant or of any of its past or present Affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Complaint or any related Commission action;

(c) any defendant in any action brought by the Commission related to the conduct described in the Complaint or any related Commission action, unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Proof of Claim Form;

(d) any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in the Complaint or any related Commission action, unless and until such Person is found not guilty prior to the Claims Bar Date, and proof of the finding(s) is included in such Person’s timely filed Proof of Claim Form;

(e) any Affiliates, assigns, creditors, heirs, distributees, spouses,

parents, children, or controlled entities of any of the foregoing Persons or entities described in Paragraph **Error! Reference source not found.**(a)-(d) above.

(f) any purchaser or assignee of another Person's right to obtain a recovery from the Disgorgement Fund, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law; and/or

(g) the Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

1.16 "Eligible Loss Amount" shall refer to the total amount of harm resulting from the violations determined in the final judgement that an Eligible Claimant has incurred for each share owned during the period of inadequate disclosure. The Eligible Loss Amount is calculated by summing the amounts of all of his/her/its individually Recognized Losses (or Gains) Per Share across all shares of AgFeed common stock claimed and documented using the methodology described in the Plan of Allocation (attached hereto as Exhibit A).

1.17 "Final Payee List" shall refer to the list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the total Eligible Loss Amount of each Eligible Claimant to be provided by the Distribution Agent within forty-five (45) days following the date the Distribution Agent has mailed all Determination Notices.

1.18 "Minimum Distribution Amount" shall be \$10.00. Each claim must calculate to the Minimum Distribution Amount individually in order to be eligible for a payment. Eligible Claimants may not combine Eligible Loss Amounts from separate claims in order to meet the Minimum Distribution Amount.

1.19 "Net Distribution Fund" shall mean the fund, plus interest, less any amounts expended or to be expended for administering the Distribution Fund (*e.g.*,

reasonable fees and expenses incurred or to be incurred in administering this Plan, tax payments, or reserves for future taxes, fees and expenses).

1.20 “Notice Date” shall mean the date that the Distribution Agent first mails the Notice Letter and Claims Packet, which shall be no later than fifty (50) days following the entry by the Court of its order approving this Plan.

1.21 “Notice Letter” shall mean all the materials to be provided to Class Action SEC Authorized Claimants. The Distribution Agent, in consultation with the staff of the Commission, shall prepare the Notice Letter, which shall include, at a minimum, a copy of the Plan Notice and a cover letter providing instruction that the Class Action SEC Authorized Claimant does not need to file a Proof of Claim Form in order to share in the distribution from the Distribution Fund, but that since the Recovery Period is longer than the Class Action period, a Class Action SEC Authorized Claimant may update or modify his, her or its claim and instructions for doing so.

1.22 “Person” shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company, or governmental entity. All nouns, pronouns, and any variations thereof in this Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.

1.23 “Plan” shall mean this Plan of Distribution, in the form approved by the Court.

1.24 “Plan Notice” shall mean the notice given to Potentially Eligible Claimants and Class Action SEC Authorized Claimants, which shall contain information about the Distribution Fund and the obligation, for all Potentially Eligible Claimants *but not* Class Action SEC Authorized Claimants, to file a Proof of Claim Form in order to participate. The Distribution Agent, in consultation with Commission staff, shall design the Plan Notice,

consistent with the provisions of this Plan.

1.25 “Potentially Eligible Claimants” shall mean those Persons identified by the Distribution Agent as having possible claims to the Distribution Fund under this Plan, or Persons asserting that they have possible claims to the Distribution Fund under this Plan but who are not Class Action SEC Authorized Claimants. Potentially Eligible Claimants includes all Class Action Claimants Ineligible for SEC Payments, Broker Notice Claimants and Publication Notice Claimants. Potentially Eligible Claimants are required to file a valid Proof of Claim Form to share in the distribution of the Distribution Fund. A Class Action SEC Authorized Claimant who submits a modified claim will be deemed a Potentially Eligible Claimant.

1.26 “Pro Rata Share” is a computation intended to measure Potentially Eligible Claimants’ claims against one another. Should the total Eligible Loss Amount of all Eligible Claimants exceed the Net Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant’s pro rata share of the Distribution Fund based upon each Eligible Claimant’s Eligible Loss Amount divided by the total Eligible Loss Amounts of all Eligible Claimants.

1.27 “Proof of Claim Form” shall mean the form designed by the Distribution Agent in accordance with this Plan for the filing of a claim. The Proof of Claim Form shall require, at a minimum, sufficient documentation reflecting the Potentially Eligible Claimant’s holdings and dispositions of all AgFeed common stock during the Recovery Period.

1.28 “Publication Notice Claimants” shall refer to those Potentially Eligible Claimants identified through the Distribution Agent’s publication of the Summary Notice in

accordance with Section 3.15 of this Plan. A Publication Notice Claimant will receive a copy of the Claims Packet and is required to file a valid Proof of Claim Form in order to share in the distribution from the Distribution Fund.

1.29 “Recognized Loss (or Gain) Per Share” shall mean the amount of loss (or gain) per share of AgFeed common stock, as calculated pursuant to the Plan of Allocation.

1.30 “Recovery Period,” for the purposes of this Plan, shall mean the period of March 14, 2008 to December 19, 2011.

1.31 “Summary Notice” shall mean the notice to be published in a national publication pursuant to Section 3.15 below. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement that the Distribution Fund relates to holdings, purchases and sales of AgFeed common stock during the Recovery Period and the means of obtaining a Claims Packet.

1.32 “Tax Administrator” shall mean Damasco & Associates, LLP, the firm appointed by the Court on October 6, 2015. Damasco & Associates, LLP’s principal place of business is Half Moon Bay, California.

## **ARTICLE II**

### **ALLOCATION AMONG ELIGIBLE CLAIMANTS**

2.1 The Distribution Fund shall be allocated among Eligible Claimants as provided under the terms of this Plan.

2.2 An Eligible Claimant’s calculated Eligible Loss Amount shall be used as the basis for calculating, pursuant to the Plan of Allocation, whether an Eligible Claimant holds a claim that meets the Minimum Distribution Amount and is thus eligible for a Distribution Payment. As described in the Plan of Allocation, the Eligible Loss Amount is determined by aggregating the Recognized Loss (or Gain) Per Share of all shares held at any

time during the Recovery Period.

### ARTICLE III

#### ADMINISTRATION OF THE CLAIMS PROCEDURE

##### A. General Administrative Provisions

3.1 The Distribution Agent shall oversee the administration of the claims, procedures, and distribution as provided in this Plan. The Distribution Agent shall review each Proof of Claim Form submitted by a Potentially Eligible Claimant, make a determination under the criteria established herein and in the Plan of Allocation as to the eligibility of each Potentially Eligible Claimant, calculate the Eligible Loss Amount, and the Distribution Payment, if any.

3.2 Any claim asserted by a Potentially Eligible Claimant (except as provided in Section 3.4 below) shall be in writing<sup>2</sup> and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence which the Distribution Agent deems necessary or appropriate, including, but not limited to, available account statements and trade confirmations.

3.3 All claims (except as provided in Section 3.4 below) must be verified on the basis of a sworn Proof of Claim Form, affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States.

3.4 A Class Action SEC Authorized Claimant is not required to submit the written Proof of Claim Form described in Section 3.2 or undergo the verification described in Section 3.3, unless such claimant wants to modify his, her or its claim, thereby becoming

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<sup>2</sup> Claims with 100 or more transactions or on behalf of 20 or more different accounts must be submitted electronically and in the format specified by the Distribution Agent. The mandatory electronic filing requirements will be available on the Distribution Fund website. Files that do not comply with the required electronic filing format may be rejected.

a Potentially Eligible Claimant.

3.5 The receipt of AgFeed common stock before or during the Recovery Period by gift, inheritance, devise, or operation of law shall not be deemed to be a purchase at the time of receipt. Similarly, the delivery of AgFeed common stock during the Recovery Period shall not be deemed to be a sale at the time of delivery. Both receipts and deliveries of shares shall calculate to no Recognized Loss Amount Per Share.

3.6 To the extent that an Eligible Claimant's representative, heir, successor assign requests a Distribution Payment to be issued or reissued in a different name than the Eligible Claimant (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), the Distribution Agent shall honor such request upon timely receipt of documentation which the Distribution Agent in its sole discretion deems appropriate to substantiate the request.

3.7 For claims made on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which does not include Individual Retirement Accounts, and for which such claims are properly made by the custodian or fiduciary of the plan and not by the plan's participants, the Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner that is consistent with its fiduciary duties and the account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent prior to the Claims Bar Date.

3.8 For custodians, trustees, or professionals who have invested on behalf of

more than one Potentially Eligible Claimant or Class Action SEC Authorized Claimant in a pooled investment fund or entity, any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, should be allocated for the benefit of current or former pooled investors and not for the benefit of management.

3.9 The Distribution Agent shall take reasonable and appropriate steps to distribute the Distribution Fund according to the Plan. The Distribution Agent will inform Commission staff of any changes needed in the Plan. Upon agreement with Commission staff, the Distribution Agent may implement immaterial changes to the Plan to effectuate the general purposes. If a change is deemed to be material by Commission staff, Court approval is required prior to implementation by amending the Plan.

3.10 The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the staff of the Commission.

**B. Identification of and Notice to Class Action SEC Authorized Claimants and Potentially Eligible Claimants**

3.11 Prior to the Notice Date, the Distribution Agent shall, insofar as is practicable, use its best efforts to identify all Class Action SEC Authorized Claimants from a review of the database maintained in the Class Action, and to identify Potentially Eligible Claimants from a review of the trading records, claim filing information and any other communication included in the database maintained in the Class Action.

3.12 The Distribution Agent will build a database for purposes of administering the Distribution Fund containing previously approved information regarding all Class Action SEC Authorized Claimants as well as information received regarding Potentially Eligible Claimants. If a previously approved claim is amended by a Class Action SEC Authorized Claimant, the Distribution Agent will update the Distribution Fund database to

reflect the Class Action SEC Authorized Claimant's modified claim.

3.13 Within fifty (50) days following the entry by the Court of its order approving this Plan, the Distribution Agent shall:

(a) run a National Change of Address search to retrieve updated addresses for all records, so that the Distribution Agent has updated mailing information, to the extent possible, for Class Action SEC Authorized Claimants and for Class Action Claimants Ineligible for SEC Payments;

(b) mail by United States First Class Mail a Claims Packet to each Potentially Eligible Claimant and a Notice Letter to each Class Action SEC Authorized Claimant known to the Distribution Agent.

(c) establish a website constructed for the administration of the Distribution Fund from which each Class Action SEC Authorized Claimant and each Potentially Eligible Claimant may download a copy of the Plan, Claims Packet and other relevant documents online;

(d) establish a toll-free telephone call-in number by which Class Action SEC Authorized Claimants and Potentially Eligible Claimants can obtain information about the Distribution Fund; and

(e) send a copy of the Claims Packet to banks, brokers, and other third parties who may have purchased shares of AgFeed common stock for the beneficial interest of others to request that insofar as they did not provide the names and addresses of such Persons to the Distribution Agent during the Class Action, that they provide such names and addresses now so that such Persons can be notified as Broker Notice Claimants.

3.14 Any additional Potentially Eligible Claimants identified just prior to or after

the Notice Date will be promptly sent a copy of the Claim Package either on or soon after the Notice Date.

3.15 Within fourteen (14) days following the Notice Date the Distribution Agent shall publish a Summary Notice, approved by Commission staff, on a single occasion in *Investor's Business Daily* (as well as a release on the *PR Newswire*) to identify Publication Notice Claimants.

3.16 On an on-going basis after the Notice Date but before the Claims Bar Date the Distribution Agent shall continue to mail and re-mail copies of the Claims Packet to Potentially Eligible Claimants and Class Action SEC Authorized Claimants who contact the Distribution Agent requesting a copy of the Claims Packet.

3.17 The Distribution Agent shall also give additional notice of the distribution process in such a manner as the Distribution Agent, in consultation with Commission staff, deems appropriate, which may include further direct notification to custodians, securities broker-dealers, and other potential nominee purchasers identified by the Distribution Agent.

3.18 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant (including a Class Action SEC Authorized Claimants who modifies a claim) must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Distribution Agent may extend the Claims Bar Date for one or more Potentially Eligible Claimants, with approval by Commission staff, in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Such decisions of the Distribution Agent and Commission staff are final and not subject to challenge.

**C. Notification of Claims Determination, Including Claim Deficiency Notice and Opportunity to Cure**

3.19 The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of he, she, or, its claim, and that he, she, or it qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

3.20 The Distribution Agent shall provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient and instructions on how to cure the deficiency. The Claim Deficiency Notice shall be provided to such affected claimants within sixty (60) days after the Claims Bar Date.

3.21 Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have thirty (30) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

3.22 Before final payment amounts are calculated, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a Proof of Claim Form with the Distribution Agent. In the event a claim is denied, in whole or in part, the Distribution Agent will state the reason for such denial. The Distribution Agent will not send Determination Notices to Class Action SEC

Authorized Claimants, unless they have modified their claim. The Determination Notice will be sent within one hundred eighty (180) days of the Claims Bar Date.

3.23 All claimants have the burden of providing the Distribution Agent with any changes to his, her, or its name or mailing address.

3.24 All determinations made by the Distribution Agent in accordance with this Plan shall be final.

**D. Payment to Eligible Claimants**

3.25 The Distribution Agent shall distribute the Distribution Fund to all Eligible Claimants who qualify for a Distribution Payment only after all timely submitted Proof of Claim Forms have been processed and all Potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

3.26 Within forty-five (45) days following the date the Distribution Agent has mailed all Determination Notices, the Distribution Agent shall prepare a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Total Eligible Loss Amount of each Eligible Claimant (*i.e.*, the Final Payee List). The Distribution Agent shall provide the Final Payee List to Commission staff with a reasonable assurances letter as to the completeness and accuracy of the Final Payee List.

3.27 After receipt and acceptance of the Final Payee List, Commission staff will petition the Court to transfer the entire Distribution Fund to the Distribution Agent for distribution to Eligible Claimants pursuant to this Distribution Plan. In recommending a distributable amount to the Court, the Distribution Agent will retain a prudent reserve to pay any taxes, fees and expenses payable in connection with the Distribution Fund. The Final Payee List shall, upon request, be made available to the Court

under seal.

**E. Establishment of the Escrow Account**

3.28 Prior to disbursement of the Distribution Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank (“Bank”), not unacceptable to Commission staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Distribution Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Distribution Fund as custodian for the distributees of this Distribution Plan. The name of each account will be in the following form: “SEC v. AgFeed Distribution Fund.”

3.29 During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, tax obligations, and/or fees and expenses that may accrue, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or 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; provided, however, that the money

market mutual funds' investments in short-term United States Treasury securities will not be made through repurchase agreements or other derivative products.

3.30 In consultation with the staff of the Commission, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Distribution Fund.

3.31 Upon transfer from the SEC-designated account, the assets of the Distribution Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of checks. All Distribution Fund checks presented for payment or electronic transfers will be subject to "positive pay" controls before they are honored by the Bank. The "positive pay" system provides protection against fraud arising from counterfeit or altered checks. The "positive pay" system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank's confirmation that a presented check matches the relevant "positive pay" criteria.

3.32 The Distribution Agent shall provide copies of bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

**F. Distribution**

3.33 The Distribution Fund will be distributed to Eligible Claimants as provided under the terms of the Distribution Plan. An Eligible Claimant's total Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Exhibit A to this

Distribution Plan, will be used to determine the amount of their Distribution Payment.

3.34 Should the total amount of the total Eligible Loss Amount of all Eligible Claimants exceed the Net Distribution Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. This formula will be the total Eligible Loss Amount of each Eligible Claimant divided by the aggregate total Eligible Loss Amounts of all Eligible Claimants. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds \$10.00.

3.35 Following the Court's approval of the Commission's petition for the authority to distribute the Distribution Fund to Eligible Claimants as provided for in this Distribution Plan, the Distribution Agent shall commence the distributions to all Eligible Claimants as promptly as possible following the transfer of funds from the Commission to the Escrow Account at the Bank.

3.36 All Distribution Fund checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will remain in the Distribution Fund.

3.37 All Distribution Payments shall 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 recipient and that the recipient 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 after ninety (90) days; and

(d) the name of a person or entity to contact if the Eligible Claimant has any questions regarding the distribution.

3.38 The foregoing communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Distribution Fund distribution checks, on their face or in the accompanying mailing, shall clearly indicate that the money is being distributed from the Distribution Fund established by the Commission to compensate investors for harm as a result of securities law violations that affected their investment in AgFeed common stock.

3.39 The Distribution Agent, and/or each of their designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; any orders issued by the Commission, the Secretary by delegated authority or an Administrative Law Judge; and/or on any investor information provided by Commission staff.

3.40 The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against any party.

#### **ARTICLE IV**

#### **POST-DISTRIBUTION**

4.1. The Distribution Agent shall reissue checks to Eligible Claimants upon the receipt of a valid written request from the Eligible Claimant. Such reissued checks will be void either ninety (90) days after issuance or sixty (60) days after the stale date of the original check, whichever is later. The Distribution Agent may decline to reissue checks one

hundred and twenty (120) days after the original check was issued.

4.2. The Distribution Agent shall use reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service, and will reissue checks to Eligible Claimants who are located so long as the new address is received within one hundred and twenty (120) days post-distribution. However, Eligible Claimants have the burden of providing the Distribution Agent with any changes to their mailing address.

4.3. In addition, the Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow-up on the status of uncashed Distribution Payments 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 Distribution Agent may reissue such checks, subject to the time limits detailed herein.

4.4. If after consultation with Commission staff, a second distribution is not deemed cost effective, the remaining funds shall be returned to the Commission for transfer to the bankruptcy estate of Defendant or to the Liquidating Trust established pursuant to a confirmed Chapter 11 plan in the Bankruptcy Case for the benefit of Class 5B Equity Interests, as applicable. In the event the bankruptcy estate and the Liquidating Trust have terminated, any portion of the Fund not so distributed shall be paid to the United States Treasury.

## **ARTICLE V**

### **WIND DOWN OF DISTRIBUTION**

5.1 Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts shall be returned to the Commission for transfer to the bankruptcy estate of Defendant or to the Liquidating Trust established

pursuant to a confirmed Chapter 11 plan in the Bankruptcy Case for the benefit of Class 5B Equity Interests, as applicable. In the event the bankruptcy estate and the Liquidating Trust have terminated, any portion of the Fund not so distributed shall be paid to the United States Treasury.

5.2 Before terminating the Distribution Fund, the Distribution Agent shall make arrangement for the final payment of taxes, and any remaining fees and expenses.

5.3 The Distribution Agent shall also provide to Commission staff for approval and filing with the Court a final report and final account statement in a format to be provided by Commission staff, when the administration of the Distribution Fund is completed. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan and shall be compiled in coordination with the Tax Administrator.

5.4 If, after the Distribution Agent makes the distribution to Eligible Claimants, funds remain in the Distribution Fund after payment of all outstanding taxes, fees and expenses (“Remaining Funds”), within thirty (30) days after the final accounting is approved by the Court, the Commission shall return the funds to the bankruptcy estate of Defendant or to the Liquidating Trust established pursuant to a confirmed Chapter 11 plan in the Bankruptcy Case for the benefit of Class 5B Equity Interests, as applicable. In the event the bankruptcy estate and the Liquidating Trust have terminated, any portion of the Fund not so distributed shall be paid to the United States Treasury.

5.5 The Distribution Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (1) the final fund accounting has been submitted to and approved by the Court; (2) all taxes, fees and expenses have been paid; and (3) disposition of all Remaining Funds has occurred in the

manner specified in 5.4 above.

5.6 The Distribution Agent will maintain all documents, including documents in any media, six (6) years after approval of the final fund accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction.

5.7 The Distribution Agent will shut down the toll-free number and website established specifically for the administration of the Distribution Fund pursuant to Commission staff's direction.

5.8 Prior to the termination of the Distribution Fund, all approved final fees and expenses shall be paid from the Distribution Fund, all outstanding checks shall be voided, and any Remaining Funds shall be transferred as specified in 5.4 above.

5.9 Once the Distribution Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

## **ARTICLE VI**

### **RESPONSIBILITIES OF THE TAX ADMINISTRATOR**

6.1 The Distribution Fund is a Qualified Settlement Fund within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund 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) submitting requests for funds necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing of applicable tax returns; and
- (c) fulfilling any information, reporting, or withholding requirements

required for distributions from the Distribution Fund.

6.2 The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

6.3 All fees, costs and expenses of the Tax Administrator will be paid by the Distribution Fund as part of the cost of the administration of the Distribution Fund.

## **ARTICLE VII**

### **PAYMENT OF COSTS, FEES, AND TAXES, AND FILING OF REPORTS AND ACCOUNTINGS**

7.1 All reasonable costs and fees of the Distribution Agent incurred in the performance of its duties, will be paid from the Distribution Fund, subject to the review and approval of Commission staff. All payments to the Distribution Agent will be paid from the Distribution Fund after review by Commission staff and approval by the Commission. Payments will first be made from interest earned on the invested funds, then, if not sufficient, from the corpus.

7.2 The Distribution Agent shall provide to the Commission staff a quarterly cash report, in a format to be provided by Commission staff, within twenty (20) days after the end of every calendar quarter. At the request of Commission staff, the Distribution Agent will also provide periodic progress reports, which will inform the Commission of the activities and status of the Distribution Fund during the requested reporting period.

7.3 When the final distribution is completed, the Distribution Agent shall provide to Commission staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. In addition to the final report, the Distribution Agent shall submit a final accounting to the Commission for filing with the Court, as provided in Section 5.3, of all monies received, earned, spent, and distributed in connection with the

administration of this Plan in a format provided by Commission staff.

## **ARTICLE VIII**

### **OTHER RIGHTS AND POWERS**

8.1 The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Distribution Fund, for a pecuniary loss to the Distribution Fund, for any action taken or omitted by the Distribution Agent in connection with this Distribution Plan and all Potentially Eligible Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

8.2 The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided that such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

8.3 All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

8.4 The Court reserves the right to amend this Distribution Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other

matters that may arise under or relate to this Distribution Plan.

8.5 Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person for making a distribution in accordance with the Order of the Court approving the distribution and the schedules of Eligible Claimants, and their Eligible Loss Amounts as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Distribution Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with this Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

8.6 The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent), including, but not limited to, Defendants and Defendants' past or present directors, officers, employees, advisers, and agents.

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# **EXHIBIT B**

## Plan of Allocation

The Distribution Fund will be distributed to Eligible Claimants pursuant to the terms of the Plan of Allocation.

### CALCULATION OF RECOGNIZED LOSS PER SHARE

1. Based on the formula set forth below, “Recognized Loss Per Share,” shall be calculated for each purchase or acquisition of AgFeed common stock during the Recovery Period that is listed in the claim and for which adequate documentation is provided, or was accepted as part of the Class Action. In the calculations below, if a Recognized Loss Per Share calculates to a negative number, that Recognized Loss Per Share shall be \$0.00.
2. For shares of AgFeed common stock not purchased during the Recovery Period the Recognized Loss Per Share is \$0.00.
3. For each share of AgFeed common stock purchased during the Recovery Period and:
  - a) Sold between March 14, 2008, and the close of trading on December 19, 2011, the Recognized Loss Per Share shall be *the lesser of*: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase minus the amount of artificial inflation per share as set forth in Table A on the date of the sale; or (ii) purchase/acquisition price minus the sale price.
  - b) Held as of the close of trading on December 19, 2011, the Recognized Loss Per Share shall be *the lesser of*: (i) the amount of artificial inflation per share as set forth in Table A on the date of purchase; or (2) the purchase/acquisition price minus \$0.38, the closing price for AgFeed common stock on December 19, 2011.

### GENERAL PROVISIONS

4. Exercise of option contracts or the conversion of preferred stock into common stock will be considered to be purchases or sales of common stock as of the date of the exercise or conversion.
5. To the extent a claimant had a gain from his, her, or its overall transactions in AgFeed common stock during the Recovery Period, the value of the claim will be zero. Shares held before the beginning of the Recovery Period and uncovered short sales are excluded

from the calculation of overall gain or loss. For shares purchased during the Recovery Period and held through the end of the Recovery Period, a value of \$0.38 will be applied as the holding value for the purpose of calculating an overall loss or gain. If a claimant had a net market loss in his, her or its trading in AgFeed common stock, the claimant's Eligible Loss Amount shall be limited to the claimant's net market loss.

6. Subject to the limitations set forth in the Distribution Plan, if a Potentially Eligible Claimant acquired AgFeed common stock by way of gift, inheritance, devise or operation of law, such claim will be computed using the date and price of the original purchase and not the date and price of transfer, gift or inheritance. To the extent those shares were not originally purchased in the Recovery Period, the Recognized Loss Per Share for that acquisition shall be \$0.00.
7. The Recognized Loss Per Share on "short sales" is zero. In the event that a claimant has an opening short position in AgFeed common stock, the earliest Recovery Period purchases shall be matched against such opening short position and not be entitled to a recovery and will not contribute to a market gain or loss until that short position is fully covered.

**USE OF "FIFO" METHODOLOGY FOR COMPUTATION OF RECOGNIZED LOSSES FOR ELIGIBLE CLAIMANTS WHO MADE MULTIPLE TRANSACTIONS IN ELIGIBLE SECURITIES DURING THE RECOVERY PERIOD**

8. For Eligible Claimants who held shares before the beginning of the Recovery Period and/or made multiple purchases, acquisitions or sales of the AgFeed common stock during the Recovery Period, the sales of shares will be matched in chronological order first against the claimant's closing position the day before the beginning of the Recovery Period, until that day's closing position has been exhausted; then remaining sales after the beginning of the Recovery Period will be matched in chronological order against purchases or acquisitions made in the Recovery Period until all such shares have been exhausted. Purchases and sales of eligible securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

**COMPUTATION OF THE ELIGIBLE LOSS AMOUNT FOR EACH ELIGIBLE CLAIMANT**

9. The Eligible Loss Amount will be calculated for each share of AgFeed common stock that was purchased in the Recovery Period, listed in the Proof of Claim Form and for which adequate documentation is provided or which is listed in the Class Action SEC

Authorized Claimant's record. The Eligible Loss Amount for each share of AgFeed common stock is calculated by multiplying the number of shares by the appropriate Recognized Loss Per Share as calculated in paragraphs 2 and 3 above. An Eligible Claimant's Eligible Loss Amount equals the sum of Recognized Losses for all shares purchased in the Recovery Period.

### **DISTRIBUTION PAYMENT CALCULATIONS**

10. Should the total Eligible Loss Amounts of all Eligible Claimants exceed the Net Distribution Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant's *pro rata* share of the Net Distribution Fund based upon each Eligible Claimant's total Eligible Loss Amount divided by the total Eligible Loss Amounts of all Eligible Claimants.
11. Each Eligible Claimant shall be allocated a Distribution Payment if eligible. In no event will an Eligible Claimant receive a Distribution Payment totaling more than his, her or its calculated harm, after taking into account the payment received in the Class Action.
12. If an Eligible Claimant has a calculated Distribution Payment that is less than \$10.00 in total that Eligible Claimant will not be included in the calculation and the funds will be distributed to other Eligible Claimants who's Distribution Payment is greater than the Minimum Distribution Amount.

**TABLE A**

**Purchase and Sale Inflation March 14, 2008 — December 19, 2011**

Transaction Date	Inflation
March 14, 2008 – August 1, 2011	\$0.91
August 2, 2011 – September 29, 2011	\$0.33
September 30, 2011 – December 19, 2011	\$0.12