

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**SECURITIES AND EXCHANGE COMMISSION,** :  
 :  
 **Plaintiff,** :  
 :  
 v. :  
 :  
**THE BISYS GROUP, INC.,** :  
 :  
 **Defendant.** :

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**07 Civ. 4010 (RJS)  
ECF CASE**

**[PROPOSED] DISTRIBUTION PLAN**

This plan of distribution (“Distribution Plan” or “Plan”) governs the distribution of funds paid in settlement by Defendant The BISYS Group, Inc.<sup>1</sup> in this action, together with any funds that may be combined therewith from funds paid in settlement by Defendant Steven Wevodau in SEC v. Steven Wevodau, 08-Civ-8348 (GBD) (S.D.N.Y.).

**BACKGROUND**

**The Commission’s Civil Action Against BISYS**

On May 23, 2007, Plaintiff Securities and Exchange Commission filed its complaint against BISYS in this action alleging, *inter alia*, that BISYS violated the financial reporting, books-and-records, and internal control provisions of the Securities Exchange Act of 1934 (“Exchange Act”) by engaging in a variety of improper accounting practices that resulted in material overstatements of BISYS’s reported financial results in fiscal years 2001, 2002, and 2003. (BISYS’s fiscal year ended on June 30; the company’s first overstated results, for the quarter ended September 30, 2000, were announced on October 23, 2000.) On July 18, 2007, the Court entered a final judgment against BISYS to which BISYS consented without admitting or

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<sup>1</sup> On August 1, 2007, BISYS was acquired by Citigroup.

denying the allegations in the complaint (the "Final Judgment"). On August 1, 2007, pursuant to the terms of the Final Judgment, BISYS paid a total of approximately \$25 million in disgorgement and pre-judgment interest in settlement of the case. Those funds were deposited in an interest bearing account with the Court Registry Investment System, where they remain, together with interest earned thereon, minus amounts disbursed for payment of taxes, awaiting disposition. The Final Judgment provides that the Commission may, by motion, propose a plan to distribute the monies paid by BISYS in settlement of the case, subject to the Court's approval, and that BISYS shall pay the expenses and fees associated with the distribution.

## ARTICLE I

### DEFINITIONS

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 the United States Bankruptcy Code, 11 U.S.C. § 101(2).

1.2 "Authorized Payment" shall mean the amount of the payment that each Eligible Claimant entitled to receive a distribution shall receive and shall be based on the Eligible Claimant's Net Recognized Loss and *pro rata* share of the Available Distribution, as determined by the Distribution Agent under the Distribution Plan. The minimum payment threshold for an Authorized Payment shall be \$10.00 and the Authorized Payment will not exceed the Eligible Claimant's Maximum Recovery.

1.3 "Available Distribution" shall mean the Distribution Fund, together with all interest earned thereon, minus amounts disbursed, or to be disbursed, for payment of taxes and fees paid to the Court or Court registry investment system.

1.4 "BISYS Claims Database" shall mean the database prepared by the Distribution Agent containing all claims information for Eligible Claimants.

1.5 "BISYS Securities" shall mean The BISYS Group, Inc. common stock.

1.6 "Claims Administrator" shall mean A.B. Data, Ltd., the Claims Administrator recommended by the Commission and approved by the Court to assist in the administration and distribution of the Distribution Fund.

1.7 "Class Action" shall mean In re BISYS Securities Litigation, 04-Civ-3840 (JSR), an action that arose from the same operative facts giving rise to the Commission's civil actions against BISYS and Wevodau.

1.8 "Days" shall mean calendar days.

1.9 "Distribution Fund" shall mean the amount on deposit in an account in the Court Registry Investment System for this matter or in the Distribution Account(s) established by the Distribution Agent and shall be comprised of the amount paid by BISYS in settlement of this action, any additions thereto as may be provided by future court order or agreements in related cases or otherwise, including, but not limited to, SEC v. Wevodau, plus accrued interest, minus taxes and any Court or Court Registered Investment System fees.

1.10 "Distribution Account(s)" shall mean the bank account(s) into which the Distribution Agent shall deposit the Distribution Fund in anticipation of effecting the distribution.

1.11 "Distribution Agent" shall mean Anya Verkhovskaya in her capacity as an officer and director of A.B. Data, Ltd., the Distribution Agent recommended by the Commission, and approved by this Court, to implement this Distribution Plan.

1.12 "Distribution Plan" shall mean this distribution plan as approved by the Court herein.

1.13 "Eligible Claimant" shall mean (a) a person/entity who filed a non-deficient claim in the Class Action and purchased BISYS Securities during the Recovery Period, suffering a Net Recognized Loss as defined herein; and (b) any Opt-Out (as defined below) who submits a claim in this action and is finally determined by the Distribution Agent to be eligible for a distribution in this case because the Opt-Out purchased BISYS Securities during the Recovery Period and suffered a Net Recognized Loss as defined herein. An "Eligible Claimant" shall not include:

- (a) Any defendant or respondent in any enforcement proceeding brought by the Commission related to the conduct described in the Commission's Complaint in this action or any related Commission action;
- (b) Any senior officer of BISYS or of BISYS's Insurance Services division who served in such capacity during the Recovery Period and was a defendant in the Class Action; and
- (c) The Distribution Agent or Claims Administrator, their employees, and those persons assisting the Distribution Agent or Claims Administrator in their respective roles as the Distribution Agent or Claims Administrator.

1.14 "Located Eligible Claimants" shall mean those Eligible Claimants for whom the Distribution Agent believes she has a valid, updated address after following the procedure set forth in Article IV for researching returned Notices of Distribution and returned Notices and Claim Forms, including any claim timely received from an Opt-Out and deemed acceptable by the Distribution Agent.

1.15 “Loss Formula” shall be the methodology for calculating Net Recognized Losses set forth in Article II, below.

1.16 “Maximum Recovery” shall mean the sum of the Eligible Claimant’s purchase expenditure on BISYS Securities less the proceeds received from the sale of those Securities, plus an ascribed holding value for shares held at the close of the Recovery Period calculated in accordance with the First-In, First-Out method of accounting. The proceeds from sales of shares that have been matched against shares held before the commencement of the Recovery Period, however, will not be considered in the calculation.

1.17 “Minimum Distribution Amount” shall mean the specified dollar amount that an Authorized Payment must equal or exceed in order for a distribution to be made to an Eligible Claimant. The Minimum Distribution Amount shall be \$10.00.

1.18 “Net Recognized Loss” shall mean the net loss an Eligible Claimant has incurred through the purchase of BISYS Securities during the Recovery Period, as determined under the Loss Formula in Article II, below as limited by the Maximum Recovery, defined above.

1.19 “Notice and Claim Form” shall mean the notice and claim form mailed to the Opt-Outs informing them of the pending distribution and the opportunity to file a claim.

1.20 “Notice of Distribution” shall mean the notice mailed to Eligible Claimants (other than Opt-Outs) informing them of the pending distribution in this action.

1.21 “Opt-Out” shall mean a member of the class in the Class Action who requested to be excluded from the class in the Class Action and whose exclusion was approved by the court in that action.

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 Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.

1.23 "Recognized Loss (or Gain)" shall mean the amount of loss or gain based on the transactional data for BISYS Securities provided by claimants as calculated pursuant to the Loss Formula in Article II, below.

1.24 "Recovery Period," for purposes of this Distribution Plan, shall mean the period of time commencing on October 23, 2000, and continuing through the close of the markets on April 22, 2004.

1.25 "Tax Administrator" shall mean Damasco & Associates, LLP, the firm recommended by the Commission and appointed by the Court on November 1, 2007 to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the funds under the Court's jurisdiction in this case.

## **ARTICLE II**

### **ALLOCATION AMONG ELIGIBLE CLAIMANTS**

2.1 The Distribution Agent shall allocate the Available Distribution *pro rata* among Eligible Claimants according to each Eligible Claimant's Net Recognized Loss under the Loss Formula below. The amount of the *pro rata* distribution an Eligible Claimant is entitled to receive is the Authorized Payment. Distribution payments shall only be made to Eligible Claimants whose Authorized Payment equals or exceeds \$10.00.

2.2 An Eligible Claimant's Net Recognized Loss shall be determined by aggregating the Recognized Losses on all BISYS shares purchased during the Recovery Period as calculated under the Loss Formula below, such amount being limited to the Maximum Recovery, to

produce the Net Recognized Loss. The Distribution Agent will not aggregate an Eligible Claimant's accounts for purposes of determining such Eligible claimant's Net Recognized Loss.

2.3 Loss Formula: an Eligible Claimant's Recognized Loss shall mean the amount determined as follows:

- (a) for all Eligible Claimants who acquired BISYS shares between October 23, 2000, and September 24, 2003, who:
  - (i) sold their shares on or before September 24, 2003, the recognized loss shall be zero;
  - (ii) sold their shares between September 25, 2003, and April 21, 2004, the recognized loss shall be \$2.49 per share;
  - (iii) held their shares as of April 22, 2004, the recognized loss shall be \$2.85 per share;
- (b) for all Eligible Claimants who acquired BISYS shares between September 25, 2003, and April 21, 2004, who:
  - (i) sold their shares on or before April 21, 2004, the recognized loss shall be zero;
  - (ii) held their shares as of April 22, 2004, the recognized loss shall be \$1.69 per share.

2.4 For claimants who held shares at the beginning of the Recovery Period, or made multiple purchases or sales during the Recovery Period, the First In, First Out ("FIFO") method will be applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO method, sales of shares during the Recovery Period will be matched, in chronological order, first against shares held at the beginning of the Recovery Period. The remaining sales of

shares during the Recovery Period will then be matched, in chronological order, against shares purchased during the Recovery Period.

2.5 An Eligible Claimant will be eligible to receive a distribution only if that Eligible Claimant had a net loss on their transactions during the Recovery Period as described in the definition of Maximum Recovery above.

### **ARTICLE III**

#### **NOTIFICATION OF ELIGIBLE CLAIMANTS AND PROCESSING OF CLAIMS**

##### **Notification of Eligible Claimants Other than Opt-Outs**

3.1 Within sixty (60) days following the Court's approval of this Distribution Plan, the Distribution Agent shall:

- (a) create a mailing and claims database, consisting of all non-deficient claims previously submitted in the Class Action that have a Net Recognized Loss under the Distribution Plan (the "BISYS Claims Database"); and
- (b) run a National Change of Address search to retrieve updated addresses for the Opt-Outs and all records in the BISYS Claims Database, thereby ensuring updated mailing information for all Eligible Claimants.

3.2 Within sixty (60) days following the Court's approval of this Distribution Plan, the Distribution Agent shall mail by First-Class United States Mail a Notice of Distribution to each Eligible Claimant (other than the Opt-Outs) informing them of the distribution in this case. The Distribution Agent, in consultation with the staff of the Commission, shall design the Notice of Distribution, consistent with the provisions of this Distribution Plan. The Notice of Distribution shall include, at a minimum, a statement that the distribution will occur in this case and will be made to purchasers of BISYS common stock during the Recovery Period, the amount



of the Eligible Claimant's Net Recognized Loss, and a link to a portion of the Commission's website where information about the Distribution Plan and a copy of the Plan can be found, and a toll-free phone number that Eligible Claimants may call for information about the Plan and the status of the distribution. The Notice of Distribution shall state that all Eligible Claimants are responsible to update their addresses with the Claims Administrator.

**Treatment of BISYS Shareholders Who Opted Out of the Class Action**

3.3 Within sixty (60) days of the Court's approval of this Distribution Plan, the Distribution Agent shall mail by First-Class United States Mail a Notice and Claim Form to the Opt-Outs, notifying them of the distribution in this case and the opportunity to submit a claim. Any such claim form submitted by an Opt-Out must be received or postmarked within thirty (30) days of the date of the mailing of the Notice and Claim Form.

3.4 Within fifteen (15) days of the receipt of a claim from an Opt-Out, the Distribution Agent shall review any information provided by the Opt-Out and determine whether and to what extent an Opt-Out is entitled to participate in the distribution under this Distribution Plan. The Opt-Out shall have the burden of proof to establish both the timely mailing to the Distribution Agent of a claim and the validity and amount of the claim. The Distribution Agent shall have the right to request, and the Opt-Out shall have the burden of providing, any additional information and/or documentation deemed relevant to the determination of the validity of the Opt-Out's claim by the Distribution Agent.

3.5 After reviewing claims received from Opt-Outs and any additional information and/or documentation requested and received, the Distribution Agent shall add to the BISYS Claims Database any valid claim timely received from an Opt-Out and notify any Opt-Out whose claim is rejected of the rejection and reason for the rejection.

## ARTICLE IV

### ADMINISTRATIVE PROVISIONS

#### General Administrative Provisions

4.1 The Distribution Agent shall oversee the distribution of the Distribution Fund and the administration of this Plan of Distribution, which shall be conducted by the Claims Administrator.

4.2 All determinations made by the Distribution Agent in accordance with this Distribution Plan shall be final and not subject to appeal.

4.3 The receipt of BISYS Securities during the Recovery Period by gift, inheritance, devise, or operation of law shall not be deemed to be a purchase of BISYS Securities during the Recovery Period, nor shall it be deemed an assignment of any claim relating to the purchase of such shares unless specifically provided in the instrument of gift or assignment. The recipient of BISYS Securities as a gift or as a distribution from an estate, however, shall be eligible to participate in the distribution of the Distribution Fund to the extent the particular donor or decedent as the actual purchaser of BISYS Securities would have been eligible based upon the circumstance of such purchase within the Recovery Period. There shall not be a dual recovery, however, as to the same BISYS Securities by both the donor and donee. As between the donor and donee of the same BISYS Securities, only the donee may receive a distribution under this Distribution Plan.

4.4 To the extent that an Eligible Claimant, his or her representative, heir, or assigns requests a distribution check 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 receipt of a written, signed request

and documentation which the Distribution Agent in its sole discretion deems appropriate to substantiate the request.

4.5 Claims 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, must be 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 distribution shall be accompanied by a list of plan participants and the number of shares owned by each plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. 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 date on which the Distribution Agent calculates the Net Recognized Loss of each Eligible Claimant.

4.6 Any distribution to the custodian, trustee, or investment professional investing on behalf of more than one potentially Eligible Claimant in a pooled investment fund or entity will be allocated for the benefit of current or former members of the fund or entity and not for the benefit of management of the fund or entity.

### **Distribution to Eligible Claimants**

4.7 The Distribution Agent will perform an advanced address search using all reasonable, commercially available resources to locate all Eligible Claimants whose Notice of Distribution are returned as undeliverable and all Opt-Outs whose Notice and Claim Forms are returned as undeliverable, to the extent such search is feasible, and will re-mail the Notice of Distribution or Notice and Claim Form to the updated address. After receiving a Notice of Distribution or Notice and Claim Form, Eligible Claimants have the burden of providing the Distribution Agent with any changes to his or her name or mailing address.

4.8 After applying the Loss Formula above to the claims information in the BISYS Claims Database for Eligible Claimants for whom the Distribution Agent believes she has a valid, updated address after following the procedure set forth above, including any claim timely received from an Opt-Out and deemed acceptable by the Distribution Agent (collectively, the "Located Eligible Claimants"), the Distribution Agent will provide a list of Located Eligible Claimants, their Net Recognized Loss, and estimated *pro rata* shares (calculated in the same manner as described in Paragraph 4.13 for Authorized Payments using an estimated Available Distribution), to the Commission staff, and upon request, to the Court.

4.9 As soon as practicable after the Commission staff's receipt of the list of Located Eligible Claimants, their Net Recognized Loss, and estimated *pro rata* shares described above, the Commission will apply to the Court for an order for distribution. Such application may include a supporting declaration from the Distribution Agent detailing the identification of Located Eligible Claimants entitled to receive a distribution and the calculation of their Net Recognized Losses and estimated *pro rata* shares.

4.10 The proposed order of distribution shall require the Clerk of Court to transfer the Distribution Fund from the Court's registry to the account(s) established by the Distribution Agent in accordance with Section 4.11, below (the "Distribution Account(s)"), in such amounts and manner as the Commission staff shall designate in writing, and shall require the Distribution Agent to distribute the Distribution Fund to Eligible Claimants within thirty (30) days of receipt.

4.11 Upon receipt of the monies from the Court's registry in this matter, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account or accounts as described below.

- (a) The bank account(s) will be maintained at a major United States commercial bank (the "Bank" or the "Escrow Agent"), to be proposed by the Distribution Agent subject to approval of the staff of the Commission. The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.
- (b) Pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, the Distribution Agent and the Bank shall establish an account for distribution in the name stated below under the Employer Identification Number ("EIN") established by the Tax Administrator, which identifies this entity as a Qualified Settlement Fund ("QSF"), as custodian for the distributees of the Distribution Plan. The name of the account shall be in the following form: "SEC v. The BISYS Group, Inc. Distribution Fund" as custodian for the benefit of investors

allocated a distribution from The BISYS Group, Inc. Distribution Plan in SEC v. The BISYS Group, Inc.

- (c) During the term of the Escrow Agreement, the Escrow Agent, acting at the written direction of the Distribution Agent, shall invest and reinvest the Escrow Property solely in instruments backed by the full faith and credit of the United States Government, including a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, and including a non-interest bearing transaction account with the unlimited deposit insurance coverage provided by the Federal Deposit Insurance Corporation in compliance with Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub.L. No. 111-203, 124 Stat. 1376 (2010), or in AAA- rated Money Market Mutual Funds registered under the Investment Plan Administrator Act of 1940 that directly invest in short term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided however, that the Money Market Mutual Funds' investments in short term U.S. Treasury securities will not be made through repurchase agreement or other derivative products. The Distribution Account(s) shall be subject to positive pay controls.
- (d) The Distribution Agent shall provide duplicate original bank account statements on the Distribution Account(s) to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

4.12 The Distribution Agent shall distribute the Available Distribution to all Located Eligible Claimants entitled to receive an Authorized Payment within thirty (30) days of receipt of the monies from the Court registry in this matter.

4.13 The Distribution Agent shall determine Located Eligible Claimants' Authorized Payments as follows:

- (a) Determine an initial *pro rata* percentage of the Available Distribution for each Located Eligible Claimant by dividing the Available Distribution by the total of all Net Recognized Losses for all Eligible Claimants.
- (b) Apply the initial *pro rata* percentage to the Net Recognized Loss of each Eligible Claim to determine the initial *pro rata* share.
- (c) The Distribution Agent will confirm that the initial *pro rata* share of the Available Distribution for each Eligible Claim when added to all payments made to the Eligible Claimant in the Class Action does not result in a windfall to the Claimant, by exceeding the Maximum Recovery (as defined herein).
- (d) If it is determined that the initial *pro rata* share, when added to the payments made to the Eligible Claimant in the Class Action, exceeds the Maximum Recovery for any Located Eligible Claimant the initial *pro rata* share will be reduced to such an amount that the Authorized Payment, when added to the payments made to the Eligible Claimant in the Class Action, does not exceed the Maximum Recovery. Any reduction for windfall to a Located Eligible Claimant will be reallocated among the rest

of the Located Eligible Claimants subject to this same windfall analysis and reduction, as required.

- (e) After reallocation of windfall amounts, the Distribution Agent shall then reallocate the initial *pro rata* shares of the Available Distribution of any Located Eligible Claimants that are less than \$10.00 among Located Eligible Claimants whose *pro rata* share meets the minimum payment threshold and who will not receive a windfall from such reallocation to arrive at an Authorized Payment for each Located Eligible Claimant entitled to receive a distribution.

4.14 After completing the calculations set forth above, the Distribution Agent shall prepare a list of the *pro rata* Authorized Payments for all Located Eligible Claimants and shall provide the list to counsel for the Commission. Upon receipt of the list, the Commission staff shall promptly approve or provide comment to the Claims Administrator in order to meet the deadline for distribution of no more than thirty (30) days from receipt of the monies from the Court's registry.

4.15 All distribution payments shall be preceded or accompanied by a communication that includes, as appropriate:

- (a) a statement describing the distribution as being made from a Distribution Fund established from monies paid by BISYS in settlement of the complaint against it in SEC v. The BISYS Group, Inc., 07-Civ-4010 (RJS) (S.D.N.Y.) for the benefit of investors injured as a result of the allegations in the complaint in that action;



- (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
- (c) a statement that checks will be void after ninety (90) days for initial distribution checks and no more than thirty (30) days for reissued distribution checks.

Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The distribution checks, on their face, or the accompanying mailing shall clearly indicate that the money is being distributed from a Distribution Fund established by the Commission to compensate investors for harm as a result of their investment in BISYS Securities.

4.16 All Distribution Fund checks issued to Located Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within that period shall be voided and the issuing financial institution shall not honor those checks pursuant to the void status in the positive pay system. 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 unless reissue has been requested, such requests being governed by Section 5.1 below. All funds in excess of tax reserves remaining after all initial distribution checks and reissued distribution checks are void will be deemed forfeited by the claimant(s).

4.17 If, after the Distribution Agent makes the distribution to Located Eligible Claimants entitled to a distribution, funds remain in the Distribution Fund in excess of tax

reserves, any excess funds shall be paid to the Commission for transfer to the United States Treasury.

4.18 The Distribution Agent will not attempt to locate Located Eligible Claimants whose distribution checks are returned as undeliverable by the U.S. Postal Service if such Located Eligible Claimant's address was researched previously following the mailing of the Notices of Distribution and Notice and Claims Forms.

4.19 The submission of a claim by an Opt-Out 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 and the Distribution Agent), including, but not limited to, BISYS and BISYS past or present directors, officers, employees, advisers, and agents.

4.20 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.

## **ARTICLE V**

### **WRAP-UP AND WIND DOWN OF THE DISTRIBUTION FUND**

5.1 The Distribution Agent shall reissue checks to Located Eligible Claimants, upon request from the Located Eligible Claimant. Such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after one hundred twenty (120) days from the date of the initial mailing of distribution checks.

5.2 As soon as practicable, but no later than one hundred eighty (180) days following the date of the initial mailing of the distribution checks, all approved final fees and expenses shall be paid, all outstanding checks shall be voided, and any remaining funds shall be paid to the

Commission for transfer to the United States Treasury upon receipt of written instructions by the Distribution Agent.

5.3 Upon final distribution of the funds, the Distribution Agent shall make arrangement for the final payment of taxes and tax-related fees, and the Tax Administrator, in coordination with the Distribution Agent, shall submit a final accounting to the Commission staff in an SEC standard accounting format provided by the staff.

5.4 The Distribution Fund shall be eligible for termination, and the Distribution Agent and Claims Administrator eligible for discharge, after all of the following have occurred:

- (a) the final accounting has been submitted and approved by the Court,
- (b) all taxes and fees have been paid, and
- (c) all remaining funds or any residual have been paid to the Commission for transfer to the United States Treasury.

5.5 The Distribution Agent shall preserve all documents, including documents in any media, for at least three (3) years after the transfer of any remaining funds to the Commission.

#### **LIABILITY OF THE DISTRIBUTION AGENT AND CLAIMS ADMINISTRATOR**

5.6 The Distribution Agent and Claims Administrator are entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by him in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

5.7 The Distribution Agent and Claims Administrator are 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 and Claims Administrator under this Distribution Plan.

5.8 Under no circumstances shall the Distribution Agent or the Claims Administrator, or their employees or agents incur any liability to any Person if the Distribution Agent makes a distribution in accordance with the list of all Eligible Claimants and their Authorized Payments as approved by the staff of the Commission, 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, the Claims Administrator, or their employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

5.9 Once the remaining funds, if any, are transferred to the Commission, no additional payments shall be made whatsoever and, in order to allow the full and final distribution of the Distribution Fund, no further claims shall be made against the Distribution Fund beyond the amount allocated to Located Eligible Claimants. Accordingly, this Plan of Distribution, as approved by the Court, bars any further claims against the Distribution Fund beyond the amount allocated to Located Eligible Claimants.

## **ARTICLE VI**

### **COOPERATION WITH 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, 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 by continuing to administer the tax obligations of the Distribution Fund in accordance with this Court's November 1, 2007 order appointing the Tax Administrator.

6.2 The Distribution Agent and the Claims Administrator shall cooperate with the Tax Administrator by providing such information necessary to ensure tax compliance as may be requested by the Tax Administrator.

#### **ARTICLE VII**

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

7.1 Until such time as the Distribution Fund is transferred from the Court's registry to the Distribution Account(s), taxes owed by the Distribution Fund will be paid from monies in the Court's registry for this matter on motion of the Commission and pursuant to the Court's order. Upon transfer of the Distribution Fund to the Distribution Account(s), the Distribution Agent shall pay from the Distribution Fund all taxes due and owing by the Distribution Fund in accordance with the instructions of the Tax Administrator.

7.2 Pursuant to the Final Judgment, the Distribution Agent's and Claim's Administrator's reasonable fees and costs associated with administering and distributing the Distribution Fund, and the reasonable costs and fees of the Tax Administrator incurred in the performance of its duties, shall be paid by BISYS.

7.3 Once the funds are transferred from the Court's registry to the Distribution Account(s), the Tax Administrator, in coordination with the Distribution Agent, shall provide the Commission staff with accountings in an SEC standard accounting format provided by the staff, which the Commission will then file with the Court. The Clerk of Court shall provide the Tax

Administrator or the Distribution Agent with any account information relating to funds held in the Court's registry for this matter that may be required for the Tax Administrator's periodic accountings, including copies of any account statements that the Tax Administrator or Distribution Agent may request,

7.4 The first accounting shall be provided to the Commission staff within twenty (20) days of transfer of the Distribution Fund from the Court's registry to the Distribution Account(s). Thereafter, the Tax Administrator shall provide an accounting within twenty (20) days after the end of every quarter and a final accounting when its duties are completed. Except for good cause shown, the final accounting shall be due no later than one hundred eighty (180) days from the date the distribution occurs. The Commission shall file the Tax Administrator's initial and quarterly accountings with the Court within ten (10) days of receipt from the Tax Administrator.

**APPENDIX**  
**SEC v. BISYS Distribution Timeline**

The Court approves the Distribution Plan.

W/in 60 days:

The Distribution Agent:

- i. Creates a mailing and claims database, of all non-deficient claims previously submitted in the Class Action that have a Net Recognized Loss under the Distribution Plan (the "BISYS Claims Database");
- ii. Runs a National Change of Address search to retrieve updated addresses for the Opt-Outs and all records in the BISYS Claims Database, thereby updating mailing information for all Eligible Claimants;
- iii. Mails a Notice and Claim Form to the Opt-Outs, notifying them of the distribution and opportunity to submit a claim; and
- iv. Mails a Notice of Distribution to all Eligible Claimants other than the Opt-Outs.

W/in 90 days:

- i. Opt-Out claims are due;
- ii. The Distribution Agent researches addresses for any Notices of Distribution or Notice and Claim Forms returned as undeliverable and mails out the Notice of Distribution or Notice of Claim form to any updated addresses that have been found (the "Second Mailing").

W/in 105 days, or  
w/in 135 days if  
there is a Second  
Mailing or  
Distribution Agent  
needs additional  
information  
from Opt-Out:

The Distribution Agent

- i. Adds any valid claims to the BISYS Claims Database;
- ii. Notifies Opt-Outs whose claims are rejected of the rejection and reasons therefor;
- iii. Computes the estimated pro rata share of Opt-Outs whose claims are accepted and Eligible Claimants for whom the Claims Administrator has good current addresses (collectively, the "Located Eligible Claimants"), and prepares a list of Located

Eligible Claimants who are thereby eligible to receive a distribution; their Net Recognized Loss and estimated *pro rata* shares;

- iv. Provides that list to the Commission staff in the form of a declaration to be included with a motion for an order for distribution to be filed by the Commission.

As soon as practicable after receipt of the Distribution Agent's list and declaration:

The Commission staff files a motion seeking to have the Distribution Fund transferred from the Court's registry to the control of Distribution Agent, subject to an escrow agreement, in anticipation of distribution and payment of final taxes.

W/in 20 days of transfer of funds from Court's registry:

Tax Administrator provides Commission staff with initial accounting.

W/in 30 days of transfer of funds from Court's registry:

The Commission files the Tax Administrator's initial accounting with the Court.

W/in 30 days of transfer of funds from Court's registry:

Distribution Agent calculates the Available Distribution and each Located Eligible Claimant's Authorized Payment and provides it to the Commission staff for review and, after resolution of any comments by the Commission staff, the Distribution Agent distributes the Authorized Payments (Distribution").

W/in 20 days of quarter-ends:

The Tax Administrator provides Commission staff with quarterly accountings.

W/in 30 days of quarter-ends:

The Commission files the Tax Administrator's quarterly accountings with the Court

W/in 90 days of Distribution:

Checks from Distribution become stale.



**W/in 120 days of  
Distribution:**

**Re-issued checks become stale (After researching addresses for any returned checks for which address research was not done previously, the Distribution Agent reissues and mails checks to updated addresses with void dates not to exceed 120 days of the initial distribution date).**

**W/in 180 days of  
Distribution:**

**All approved final fees and expenses are paid, all outstanding checks voided, and any remaining funds are paid to the Commission for transfer to the United States Treasury.**

**W/210 days of  
Distribution:**

**The Tax Administrator provides the Commission staff with a final accounting.**

**As soon as  
practicable after  
receipt of the  
final accounting:**

**The Commission files the final accounting with the Court and moves for the discharge of the Distribution Agent, Claims Administrator, and Tax Administrator.**