

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

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| SECURITIES AND EXCHANGE COMMISSION, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | 1:09 Civ. 01906 (JSG) |
| | : | |
| BRANTLEY CAPITAL MANAGEMENT, LLC et al., | : | |
| | : | |
| Defendants. | : | |

DISTRIBUTION PLAN

This plan of distribution (“Distribution Plan” or “Plan”) will govern the distribution of funds paid in settlement by Defendant Robert Pinkas (“Pinkas”) in this action.

BACKGROUND

The Commission’s Civil Actions Against Defendants

On August 13, 2009, the Commission filed a civil action against Brantley Capital Management, LLC (“BCM”), Robert Pinkas (“Pinkas”), and Tab Keplinger (“Keplinger”) (collectively, “Defendants”). Defendant BCM was the investment adviser to Brantley Capital Corp. (“Brantley”), a publicly-traded business development company. Defendant Pinkas was the Chairman and Chief Executive Officer of both BCM and Brantley, and he directed all of BCM’s investment decisions and valuation recommendations. Defendant Keplinger was the Chief Financial Officer of both BCM and Brantley.

The Complaint alleged that between 2002 and 2005, Defendants substantially overstated the value of equity and debt investments in two failing companies that represented over one-half of Brantley’s investment portfolio to generate higher investment advisory fees, made material misrepresentations and failed to make required disclosures regarding the two companies to

Brantley's board of directors, independent auditors, and to investors. Among other things, the Complaint charges Defendants with violating the antifraud statutes contained in the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act").

By order dated October 13, 2009, the Court entered Final Judgment as to Keplinger pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Pursuant to the Final Judgment, Keplinger paid \$50,000 to the Commission, which remitted the funds to the United States Treasury.

By separate orders dated September 28, 2010, the Court entered Final Judgments as to BCM and Pinkas. The Final Judgment against BCM did not require it to remit any funds. The Final Judgment against Pinkas ordered him to pay \$482,561 in disgorgement, representing profits gained as a result of the violations alleged in the Complaint, together with prejudgment interest thereon in the amount of \$150,168 and a civil penalty in the amount of \$325,000 pursuant to Exchange Act Section 21(d) and Advisers Act Section 209(e). Pinkas paid the total amount due, \$957,729, to the Clerk of this Court (the "Distribution Fund"). The Distribution Fund is currently held with the Court Registry Investment System ("CRIS") in interest-bearing Government Account Series securities.

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 *pro rata* amount of the Distribution Fund that an Eligible Claimant is entitled to receive based upon the Eligible Claimant’s Net Recognized Loss, as determined by the Distribution Agent under this Distribution Plan. The minimum payment threshold for an Authorized Payment shall be \$10.00.

1.3 “Brantley Securities” shall mean Brantley Capital Corp. common stock, purchased or acquired during the period commencing March 31, 2003, and continuing through the close of the markets October 24, 2005.

1.4 “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 within twenty (20) days of the date on such notice. A Claim Deficiency Notice shall be provided no later than sixty (60) days after the Claims Bar Date.

1.5 “Claims Bar Date” shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be received by 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 ninety (90) days after the Notice Date. Claims postmarked after the Claims Bar Date will *not* be reviewed and evaluated, unless the Court gives approval for the Distribution Agent to do so.

1.6 “Claims Packet” shall mean all the materials to be provided to Potentially Eligible Claimants known to the Distribution Agent (including Opt-Outs) or to those who request such. 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 Distribution Plan Notice and a Proof of Claim Form.

1.7 “Class Action” shall mean *Karpus Mgmt., Inc. v. Brantley Capital Corp., et al.*, 1:07-cv-01716 (JSG) (N.D. Ohio), the private securities law action arising out of the same underlying conduct as the Commission’s August 2009 civil action against Defendants. In the Brantley Class Action, claims were approved for nearly \$7 million in recognized losses against a net settlement fund of only \$3.3 million, approximately 47.876% of a claimant’s recognized loss. The net proceeds were distributed on a *pro rata* basis to Brantley shareholders who purchased Brantley Securities during the period from August 1, 2002 through October 24, 2005 inclusive.

1.8 “Class Action SEC Authorized Claimant” shall mean a Person who had a claim in the Class Action and whose claim has a Net Recognized Loss greater than \$0.00 under Article III of this Plan. A Class Action SEC Authorized Claimant is deemed an Eligible Claimant under this Distribution Plan only with respect to the Brantley Securities purchased anytime during the SEC Recovery Period of March 31, 2003 through October 24, 2005, which is shorter than the Class Action recovery period, and 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 may still be considered a Class Action SEC Authorized Claimant with respect to that part of the claim that was approved in the Class Action. A Class Action SEC Authorized Claimant is not required to file a Proof of Claim Form to share in the distribution from the Distribution Fund; a Class Action SEC Authorized Claimant, however, may modify his/her/its claim by submitting a Proof of Claim Form.

1.9 “Class Action SEC Ineligible Claimant” shall mean a Person who either (a) filed a claim with the claims administrator in the Class Action which was approved, but whose claim

under the terms of this Distribution Plan has a Net Recognized Loss 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. A Class Action SEC Ineligible 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.

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

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

1.12 “Determination Notice” shall mean the notice sent by the Distribution Agent to everyone who files a Proof of Claim Form. The Determination Notice will state the Distribution Agent’s determination with respect to the validity of the claim. Determination Notices will be mailed within 45 days of mailing all Claims Deficiency Notices, which will occur after all Proof of Claim Forms have been processed and, where necessary, 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.

1.13 “Distribution Agent” shall mean Epiq Systems, Inc. (“Epiq”), the Distribution Agent recommended by the Commission, and approved by this Court, to implement this Distribution Plan. Epiq also served as the claims administrator in the Class Action.

1.14 “Distribution Fund” shall mean the \$957,729 paid by Pinkas in settlement of the Complaint in this action, plus interest, less any amounts expended or to be expended for administering the fund (*e.g.* reasonable fees and expenses incurred or to be incurred in administering this Plan, tax payments, and/or reserves for future taxes, fees and expenses).

1.15 “Distribution Plan” shall mean this distribution plan as approved by the Court herein.

1.16 “Distribution Plan Notice” shall mean the notice given to Potentially Eligible Claimants which shall contain information about the Distribution Fund and the obligation to file a Proof of Claim Form in order to participate. The Distribution Agent, in consultation with Commission staff, shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan. Such notice shall include, at a minimum, a statement that the Distribution Fund relates to purchases of Brantley Securities during the SEC Recovery Period, the means of obtaining a copy of the Distribution Plan and Claims Packet (including Proof of Claim Forms), instruction for submitting Proof of Claim Forms, and the Claims Bar Date.

1.17 “Eligible Claimant” 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 have suffered a Net Recognized Loss as defined herein. An “Eligible Claimant” shall not include:

- a) Any director or officer, or former director or officer, of Brantley Capital Management or any of its past or present Affiliates (or any of his or her assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities) who served in such capacity during the SEC Recovery Period;
- b) Any employee of Brantley Capital who has been terminated for cause in connection with the violations alleged in the Commission’s complaint in this action or any related Commission action, or who was otherwise

terminated or has resigned in connection with the violations alleged in the Commission's Complaint in this action;

- c) Any defendant in any action brought by the Commission or any class action lawsuit related to the conduct described in the Commission's Complaint in this action, unless and until such defendant is found not liable in all such civil suits and proof of the finding(s) is provided to the Distribution Agent prior to the Claims Bar Date;
- d) Any Person who has been the subject of criminal charges related to the violations alleged in the Commission's Complaint in this action, unless and until such defendant is found not guilty in all such criminal cases and proof of the finding(s) is provided to the Distribution Agent prior to the Claims Bar Date;
- e) Any Person who assigned their right to obtain a recovery in the Commission's action against Brantley Capital Management;
- f) Any assignee of another Person's right to obtain a recovery in the Commission's action against Brantley Capital Management, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by inheritance or devise; or
- g) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its respective role as the Distribution Agent.

1.18 "Loss Formula," for purposes of this Distribution Plan, shall be the methodology for calculating Net Recognized Losses as set forth in Article III, below.

1.19 “Minimum Distribution Amount” is \$10, which is the dollar amount that an Authorized Payment must equal or exceed, after pro-rated payment awards are calculated, in order for a distribution to be made to an Eligible Claimant. An Eligible Claimant’s Net Recognized Loss shall be used as the basis for calculating the pro-rated payment award to determine if it meets the \$10 Minimum Distribution Amount for an Authorized Payment.

1.20 “Net Recognized Loss” shall mean the net loss an Eligible Claimant has incurred through the purchase of Brantley Securities during the SEC Recovery Period, as determined under the Loss Formula in Article III, below, which includes offsetting any market gains during the SEC Recovery Period.

1.21 “Notice Date” shall mean the date that the Distribution Agent first mails the Notice of Eligibility and Claims Packet, which shall be no later than forty-five (45) days following the entry by the Court of its order approving this Distribution Plan.

1.22 “Notice of Eligibility” shall mean the letter mailed to each Class Action SEC Authorized Claimant, informing them of the pending distribution pursuant to the Distribution Plan. The Distribution Agent, in consultation with the staff of the Commission, shall design the Notice of Eligibility, consistent with the provisions of this Distribution Plan. Such notice shall include, at a minimum, a statement that the Distribution Fund relates to purchases of Brantley Securities during the SEC Recovery Period, a particularized statement of each Class Action SEC Authorized Claimant’s Net Recognized Loss, and a statement that the Class Action SEC Authorized Claimant does not need to file a claim to participate in the distribution, but may modify his/her/its claim by submitting a Proof of Claim Form by the Claims Bar Date. The notice will also provide the means of obtaining a copy of the Distribution Plan and Claims

Packet (including Proof of Claim Forms), instruction for submitting Proof of Claim Forms, and the Claims Bar Date.

1.23 “Opt-Out” shall mean a member of the class in the Class Action who opted out of the class and did not submit a claim in the Class Action.

1.24 “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.

1.25 “Potentially Eligible Claimant” shall mean those Persons identified by the Distribution Agent as having possible claims to the Distribution Fund under this Distribution Plan (including Opt-Outs and Class Action SEC Ineligible Claimants), or Persons asserting that they have possible claims to the Distribution Fund under this Distribution Plan but who did not submit a claim in the Class Action. 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 “Proof of Claim Form” shall mean the form designed by the Distribution Agent, and approved by the staff of the Commission, in accordance with this Distribution Plan for the filing of a claim. The Proof of Claim Form shall require, at a minimum, sufficient documentation reflecting the claimant’s holdings and dispositions of all Brantley Securities during the SEC Recovery Period.

1.27 “Recognized Loss (or Gain) Per Share” shall mean the amount of loss (or gain) per share based on the transactional data for Brantley Securities provided by claimants as calculated pursuant to the Loss Formula in Article III, below.

1.28 “SEC Recovery Period” for purposes of this Distribution Plan, shall mean the period of time commencing on March 31, 2003, and continuing through the close of the markets on October 24, 2005. The SEC Recovery Period is seven months shorter than the recovery period in the Class Action.

1.29 “Summary Notice” shall mean the notice to be published in a national publication pursuant to Section 4.17 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 purchases of Brantley Securities during the SEC Recovery Period and the means of obtaining a Claims Packet.

1.30 “Tax Administrator” shall mean Damasco & Associates, LLP, the firm appointed by the Court on January 6, 2011, as Tax Administrator in this action.

ARTICLE II

ALLOCATION AMONG ELIGIBLE CLAIMANTS

2.1 The Distribution Agent shall allocate the Distribution Fund *pro rata* among Eligible Claimants according to each Eligible Claimant’s Net Recognized Loss under the Loss Formula in Article III, below. The amount of the *pro rata* distribution an Eligible Claimants 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 (or Gains) of all Brantley shares purchased during the SEC Recovery

Period as calculated under the Loss Formula set forth in Article III, below. The Distribution Agent will not be aggregating Eligible Claimant's accounts for purposes of determining the Net Recognized Loss.

ARTICLE III

CALCULATION OF NET RECOGNIZED LOSSES

3.1 On June 28, 2005, Brantley announced inter alia, an investigation by the Commission, and Brantley's stock fell \$4.06 from \$10.31 on June 27, 2005 to \$6.25 on June 30, 2005. On October 24, 2005, Brantley announced, inter alia, that its Flight Options investment had no value, and Brantley's stock fell \$2.05 from a high of \$6.45 on October 24, 2005 to \$4.40 on October 26, 2005. The total of these drops, \$6.11, is the maximum loss that will be recognized for purposes of the Loss Formula.

3.2 An Eligible Claimant's Net Recognized Loss shall mean the amount determined as follows:

- a) For all Claimants who purchased or acquired Brantley shares on or after March 31, 2003 and prior to June 28, 2005:
 - (1) If such shares were sold before the opening of trading on June 28, 2005, the Recognized Loss will be \$0.00.
 - (2) If such shares were sold on or after June 28, 2005, and prior to October 24, 2005, the lesser of:
 - (i) The difference between purchase price and sales price, if such difference is positive; or
 - (ii) \$4.06 per share.

(3) If such shares were still held as of the close of trading on October 24, 2005, the lesser of:

(i) The difference between the purchase price and the closing price on October 26, 2005; or

(ii) \$6.11 per share. (\$4.06 plus \$2.05).

b) For all Claimants who purchased or acquired Brantley shares on or after June 28, 2005:

(1) If such shares were sold before the opening of trading on October 24, 2005, the Recognized Loss will be \$0.00.

(2) If such shares were not sold prior to October 24, 2005, the Recognized Loss will be \$2.05 per share.

3.3 An Eligible Claimant will be eligible to receive a distribution from the Distribution Fund only if that Eligible Claimant had a net loss, after profits from transactions in Brantley Securities during the SEC Recovery Period are subtracted from all losses (the “Net Recognized Loss”). The proceeds from sales of shares that have been matched against shares held before the commencement of the SEC Recovery Period, however, will not be considered in the calculation of such Net Recognized Loss.

3.4 In no event shall an Eligible Claimant’s Net Recognized Loss exceed the sum of the Eligible Claimant’s purchase expenditure on Brantley shares less the proceeds received from the sale of those shares or the holding value of those shares if unsold, using the closing price of the shares as of October 24, 2005.

ARTICLE IV

ADMINISTRATION OF CLAIMS

A. General Administrative Provisions

4.1 The Distribution Agent shall oversee the administration of the claims, procedures, and distribution as provided in this Distribution 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 under the Loss Formula as to the eligibility of each claimant to participate in the Distribution Fund, and calculate the amount of money to be distributed from the Distribution Fund to each Eligible Claimant in accordance with the provisions of this Distribution Plan.

4.2 Any claim asserted by a Potentially Eligible Claimant (except as provided in Section 4.4 below) shall be in writing¹ 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.

4.3 All claims (except as provided in Section 4.4 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.

4.4 Class Action SEC Authorized Claimants are not required to submit the written Proof of Claim Form described in Section 4.2 or undergo the verification described in Section 4.3, unless such claimants modify their claim, thereby becoming a Potentially Eligible Claimant.

¹ 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 Fund Administrator. 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.

4.5 The receipt of Brantley Securities during the SEC Recovery Period by gift, inheritance, devise, or operation of law shall not be deemed to be a purchase of Brantley Securities during the SEC 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 Brantley 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 Brantley Securities would have been eligible based upon the circumstance of such purchase within the SEC Recovery Period. There shall not be a dual recovery, however, as to the same Brantley Securities by both the donor and donee. As between the donor and donee of the same Brantley Securities, only the donee may receive a distribution under this Distribution Plan.

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

4.7 For 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, 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.

4.8 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 will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management.

4.9 To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make non-material adjustments or clarifications to the Distribution Plan that are consistent with the purpose and scope of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission. If a change is deemed material by Commission staff, Court approval is required prior to implementation by amending the Distribution Plan.

4.10 The Distribution Agent may extend any procedural deadline contained in the Distribution 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

4.11 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 from Potentially Eligible Claimants (including Opt-Outs and Class Action SEC Ineligible Claimants). If a previously approved claim

is modified by a Class Action SEC Authorized Claimant, the Distribution Agent will update the claims database to reflect the Class Action SEC Authorized Claimant's modified claim.

4.12 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.

4.13 Within thirty (30) days following the entry by the Court of its order approving this Distribution Plan, the Distribution Agent shall 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 Potentially Eligible Claimants known by the Distribution Agent (including Opt-Outs and Class Action SEC Ineligible Claimants.)

4.14 Within forty-five (45) days following the entry by the Court of its order approving this Distribution Plan, the Distribution Agent shall:

- a) Mail by United States First Class Mail a Claims Packet to each Potentially Eligible Claimant and a Notice of Eligibility to each Class Action SEC Authorized Claimant known to the Distribution Agent.
- b) Establish a website portal constructed for the administration of the Distribution Fund from which Claims Packets and other relevant documents may be requested by mail or downloaded.
- c) Provide a copy of the Distribution Plan and Summary Notice to the Commission and request that the Commission post them on the Investors

Claims Funds page of sec.gov and establish a link to the Distribution Agent's website; and

- d) Establish a toll-free telephone call-in number by which claimants can obtain information about the Distribution Fund.

4.15 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.

4.16 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.

4.17 Within fourteen (14) days following the Notice Date, the Distribution Agent shall publish a copy of 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 additional Potentially Eligible Claimants.

4.18 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.

4.19 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant, or each Class Action SEC Authorized Claimant who wants to modify its 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 Claims Bar Date may be extended for one or more Potentially Eligible Claimants by the Distribution Agent, with approval by the staff of the Commission, in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. The burden shall be upon the Potentially Eligible Claimant to ensure that his or her Proof of Claim Form has been properly and timely received by the Distribution Agent.

C. Notification of Claims Determination, Including Notice of Deficient Claims and Opportunity to Cure

4.20 The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Net Recognized Loss, 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 his or her claim, and that he or she 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.

4.21 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.

4.22 Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

4.23 Before Authorized Payments 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 shall not send Determination Notices to Class Action SEC Authorized Claimants, unless they have modified their claim. The Determination Notice will be sent within forty-five (45) days of the Claims Deficiency Notice.

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

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

D. Distribution of Authorized Payments

4.26 The Distribution Agent shall distribute the Distribution Fund to all Eligible Claimants who qualify 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.

4.27 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 and the Net Recognized Loss of each Eligible Claimant. The Distribution Agent shall provide the final payee list to the Commission staff, and upon review, the Commission staff shall petition the Court to transfer all funds it currently holds in this matter to the Distribution Agent in accordance with the provisions of the Distribution Plan for distribution to Eligible Claimants pursuant to the

Distribution Plan. In conjunction with the motion seeking transfer of the funds to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal. The distribution amount specified to the Court will have already taken into account reserves for taxes, as requested by the Tax Administrator and approved by the Commission staff, and reserves necessary for other fees, late claims, or reasonably anticipated expenses.

4.28 Following the Court's approval of the Commission's petition for the authority to distribute the funds from the Distribution Fund to the Eligible Claimants as provided for in this Distribution Plan, the Court may issue an order to the Clerk of the Court to transfer all funds held by the Court in this matter, less any expenses due the Court, to the account or accounts established by the Distribution Agent in accordance with Section 4.29 below. The Distribution Agent shall commence the distribution to all Eligible Claimants as promptly as possible following the transfer of the funds.

4.29 Upon receipt of the monies from the Court in this matter, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in bank accounts as described below:

- a) The bank accounts will be maintained at a well capitalized² United States commercial bank (the "Bank"), to be proposed by the Distribution Agent and not unacceptable to the staff of the Commission. In the event the Bank's well capitalized status changes, the Distribution Agent will promptly inform the SEC staff of such change in status.

² A well capitalized bank is a bank that meets the Federal Reserve Board's definition of "well capitalized" in 12 C.F.R. 208.43(b)(1).

- b) The Distribution Agent shall then deliver the signed receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.
- c) 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 escrow account in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund. The Distribution Agent and Bank shall also establish a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding distribution payments to be distributed to Eligible Claimants by the Distribution Agent pursuant to the Distribution Plan. The name of each account shall be in the following form: “SEC v. Brantley Distribution Fund, as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *SEC v. Brantley Capital Mgmt. LLC, et al.*, Case No. 09-cv-1906 (ND Ohio).”
- d) 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 of the Tax Administrator and/or Distribution Agent, including investment or reinvestment in a bank account insured by

the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market funds receiving the highest rating from a nationally recognized statistical rating organizations (NRSRO), registered under the Investment Company 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 any investment in the foregoing short term U.S. Treasury securities will not be made through repurchase agreements and/or other derivative products. The Distribution Agent shall provide duplicate original 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.

- e) In consultation with the staff of the Commission, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the escrow and the deposit accounts.

4.30 If, after the Distribution Agent makes the distribution to Eligible Claimants, funds remain in the Distribution Fund in excess of the reserve for taxes and fees of the Tax Administrator and Distribution Agent, any excess funds shall be paid to the Commission for transfer to the United States Treasury.

4.31 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, that Eligible Claimant's claim is extinguished as of the stale date and the funds remain in the Distribution Fund. If a check reissue has been requested before the stale date, such a request is governed by Section 5.1 below.

4.32 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 or her 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.

Any such 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 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 Brantley Securities.

4.33 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 the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

4.34 The submission of a Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent).

ARTICLE V

POST-DISTRIBUTION

5.1 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 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 The Distribution Agent will perform advanced address searches for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within one hundred twenty (120) days from the initial mailing of the check. Furthermore, the Distribution Agent will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of Commission staff and will reissue such checks if necessary, within one hundred twenty (120) days of the initial mailing of the check.

ARTICLE VI

WRAP-UP AND WIND DOWN OF DISTRIBUTION

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

6.2 Once all of the distribution payments have been cashed or voided and within 180 days of the check void date, the funds remaining in the account at the Bank, if any, shall be

distributed as ordered by the Court, and no additional distribution payments or reissues shall be made. If any funds are available, Brantley may seek reimbursement of its expenses associated with the investigation.

6.3 When the tasks of paragraph 6.2 are completed, the Distribution Agent shall make arrangements for the final payment of taxes, fees and expenses, and in coordination with the Tax Administrator, shall submit a final accounting to the Court in an SEC standard accounting format provided by the staff of the Commission. The Distribution Fund shall be eligible for termination, and the Distribution Agent 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, fees and expenses have been paid; and
- c) All remaining funds have been paid to the Commission for transfer to the United States Treasury.

ARTICLE VII

COOPERATION WITH THE TAX ADMINISTRATOR AND PAYMENT OF TAXES

7.1 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, including, but not limited to:

- a) Obtaining a tax identification number;
- b) Submitting requests for funds from the Distribution Fund that are necessary for the timely payment of all applicable taxes, making timely

payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and

- c) Fulfilling any information reporting or withholding requirements required for distributions from the Distribution Fund.

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

ARTICLE VIII

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

8.1 All taxes and the reasonable costs and fees of the Tax Administrator, Distribution Agent, third-party professionals and service providers incurred in the performance of its duties, will be paid from the Distribution Fund, subject to the review and approval of the Court.

8.2 The Distribution Agent shall provide the assigned staff of the Commission with progress reports, in a format to be provided by the Commission staff, to be filed with the Court. The first report will be provided within forty-five (45) days of the order approving this Distribution Plan. Additional reports will be provided within twenty (20) days after the end of every quarter thereafter, and a final report will be due with the final accounting.

8.3 The progress reports shall inform the Court and the staff of the Commission of the activities and status of the Distribution Fund during the requested reporting period, and shall:

- a) Specify, at a minimum, the location of the account(s) comprising the Distribution Fund; and
- b) Include, as appropriate, an interim accounting of all monies in the Distribution Fund as of the most recent month-end, including the value of those accounts, all monies earned or received into these accounts, monies

expended from the Distribution Fund to satisfy any fees, costs, taxes, and other expenses incurred in the implementation and administration of this Distribution Plan, and funds distributed to Eligible Claimants under this Distribution Plan.

8.4 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 a request for approval of any unpaid fees and costs.

8.5 The Clerk of the Court shall provide the Distribution Agent with any account information relating to funds held by the Court that may be required for the progress and final reports, including providing copies of any account statements that the Distribution Agent may request.

ARTICLE IX

OTHER RIGHTS AND POWERS

9.1 The Distribution Agent is entitled to rely on all outstanding rules of law and court orders.

9.2 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.

9.3 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.

9.4 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.

Dated: July 29, 2013

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE