

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

Christian De Colli,

Defendant.

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: **Civil Action No. 1:08cv04520-PAC**
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: **Related Case No. 1:08cv06609-PAC**
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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION’S MOTION TO ESTABLISH FAIR FUND, APPROVE
DISTRIBUTION PLAN, AND ESTABLISH NOTICE PROCEDURES**

Plaintiff, the United States Securities and Exchange Commission (the “Commission” or “SEC”), respectfully submits this Memorandum of Law in Support of its Motion for an Order (i) establishing a Fair Fund under the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended [15 U.S.C. §7246(a)]; (ii) approving the Commission’s plan to distribute the Fair Fund attached hereto as Exhibit A (“Distribution Plan”); and (iii) establishing notice procedures as set forth in the proposed Distribution Plan.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

On May 15, 2008, the Commission brought a civil insider trading case alleging that Christian De Colli (“De Colli” or “Defendant”), a resident of Rome, Italy, made purchases of the common stock and call options of DRS Technologies, Inc. (“DRS”) on the basis of non-public information in the days and weeks preceding public disclosure in an article that appeared

in the Wall Street Journal (“WSJ”) on May 8, 2008, of advanced negotiations for the purchase of DRS by Finmeccanica SpA (“Finmeccanica”), an Italian aerospace and defense company, at a “significant premium” to DRS’s current stock price. DRS issued a press release on May 8, 2008 confirming the substance of the WSJ article. After the disclosures, DRS’s stock price jumped about 16 percent over the previous day’s closing price; De Colli liquidated his positions and made profits of over \$2.1 million.

On May 30, 2008, the Court issued a Preliminary Injunction Freezing Assets and Granting Other Relief, freezing De Colli’s financial and brokerage accounts, including his account at E*Trade Securities, LLC (“E*Trade”), which was used to transact the suspicious trades.

B. Procedural Background

On October 23, 2008, the Court entered a Final Judgment by default as to De Colli pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, permanently restraining him from violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder. Pursuant to the Final Judgment, the defendant was held liable for disgorgement of \$2,161,818.42, prejudgment interest in the amount of \$19,861.72 and a civil penalty in the amount of \$2,161,818.42, for a total of \$4,343,498.56. The Court also ordered that, in partial satisfaction of the obligation to pay disgorgement, prejudgment interest and civil penalty, Defendant would forfeit all funds and assets within his E*Trade account. On November 5, 2008, \$2,615,585.30 (the “Distribution Fund”), was deposited by the Clerk of the Court into an interest-bearing account with the Court Registry Investment System (“CRIS”), account number 1:08-cv-04520-PAC, under the case name designation *Securities and Exchange*

Commission v. De Colli. As of September 9, 2013, the balance in this account was \$2,612,032.80.

C. Appointment of Damasco & Associates LLP as Tax Administrator

The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

On February 13, 2009 the Court approved the appointment of Damasco & Associates LLP (“Damasco”) to fulfill the tax obligations of the Distribution Fund. Pursuant to that Order, the Tax Administrator is required to pay taxes in a manner consistent with treatment of the Distribution Fund as a QSF and is to be compensated for the tax services provided. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator’s duties will be borne by the Distribution Fund in accordance with the agreement between the Commission and the Tax Administrator.

II. THE COURT SHOULD ESTABLISH A FAIR FUND

The Commission now moves the Court to designate these funds as a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, which provides in relevant part:

If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund or other fund established for the benefit of the victims of such violation.

See 15 U.S.C. §7246(a). The Commission brought this action under the securities

laws and the Defendant paid civil penalties as part of the settlement. Accordingly, Section 308's requirements have been satisfied, and the Court should establish a Fair Fund to facilitate ultimate distribution to injured investors.

III. THE COURT SHOULD APPROVE PLAINTIFF'S PLAN OF DISTRIBUTION

The SEC's proposed Distribution Plan is an equitable plan, which the Court has the authority to approve. The Court has broad equitable authority to craft remedies for violations of federal securities laws. *SEC v. Fishbach Corp.*, 133 F.3d 170, 175 (2d Cir.1997). The standard applied by courts in assessing a plan of distribution is whether it is "fair and reasonable." *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991) (Court will approve plan if "fair and reasonable"). Courts have accorded the Commission wide discretion in the development of plans to distribute disgorged funds. *Id.* at 88. The proposed Distribution Plan would fairly compensate all traders in the securities of DRS who sold call options that were purchased by the Defendant during the relevant time period and who suffered a loss as a result. The proposed Distribution Plan is attached hereto as Exhibit A, and its provisions are summarized below:

- (a) The Distribution Plan provides for a comprehensive and efficient means to identify and notify potentially eligible Counter-Parties¹ who might be entitled to recovery from the Distribution Fund.
- (b) The Distribution Plan provides for the distribution of all available funds to those Counter-Parties that are eligible based upon a distribution formula calculated by the Commission's expert, *see* Declaration of Stuart Jackson, attached hereto as Exhibit B, which formula includes a hedge deduction to ensure that no Counter-Party receives a windfall profit. Consistent with precedent in other Commission

¹ A "Counter-Party" is defined as a person or firm who sold call option contracts in the securities of DRS from April 15, 2008 through May 7, 2008, which options were purchased by De Colli.

insider trading cases (*see Securities and Exchange Commission v. Reza Saleh and Amir Saleh*, United States District Court, Northern District of Texas, Dallas Division, Case No. 3:09-CV-01778-M; and *Securities and Exchange Commission v. Michael J. Ricks, et al.*, United States District Court, Western District of North Carolina, Charlotte Division, Case No. 3:04-CV-576), the distribution, as proposed, will only cover losses on trades in which the insider trader was the purchaser.

- (c) The Distribution Plan provides for the Commission staff to send a notice (a proposed Notice of Plan to Distribute Funds to Counter-Parties, attached hereto as Exhibit C) about the Plan to the Counter-Parties giving them an opportunity to object to the Commission staff's determination of the amount of their distribution payment. After the objections are resolved, either by the Commission staff or the Court, the Commission staff will submit a proposed final distribution order for the Court's approval. Once approved, the Commission staff will submit to the Clerk of the Court a list of names, addresses, and amounts to be disbursed and the Clerk shall cause checks to be drawn on the CRIS account and issued to the Counter-Parties in the amounts specified. Each check issued by the Clerk will state on the face of the check that it is valid for one year. After one year from the date on the distribution check, the Commission staff will contact the Clerk to obtain information regarding of the amount of all uncashed checks. The amount of all uncashed checks shall be returned to the Distribution Fund.
- (d) Forty-Five (45) days after the remittance of the checks, the Commission staff shall obtain information from the Clerk of the Court concerning checks that have

not been negotiated. The staff of the Commission shall then undertake good faith efforts for thirty (30) days to locate and contact the intended recipients of the uncashed checks to ensure that the intended recipients have a reasonable opportunity to participate in the distribution.

- (e) The Commission staff will submit a final report to the Court prior to termination of the Distribution Fund. The report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with any administration of the Distribution Plan, and if necessary, a request for approval of any unpaid fees and costs.
- (f) After submission of the final accounting, the Clerk of the Court will close the CRIS account, remitting any proceeds to the Office of Financial Management, U.S. Securities and Exchange Commission, for transfer to the United States Treasury.
- (g) The Distribution Fund shall be eligible for termination, after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees have been paid; and (3) all remaining funds have been paid to the Commission for transfer to the United States Treasury.

In sum, the SEC's proposed Distribution Plan in this case is "fair and reasonable." *SEC v. Wang*, 944 F.2d at 84.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant the SEC's Motion for an Order: (i) establishing a Fair Fund under the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended [15 U.S.C. §7246(a)]; (ii) approving the Commission's plan to distribute the Fair Fund submitted herewith; and (iii) establishing notice procedures as set forth in the proposed Distribution Plan.

Dated: September 17, 2013

Washington, DC

Respectfully submitted,

s/ Nichola L. Timmons
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EXHIBIT A

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

V.

Christian De Colli,

Defendant.

Civil Action No.
1:08cv04520-PAC

Related Case No.
1:08cv06609-PAC

DISTRIBUTION PLAN

The Securities and Exchange Commission (the “Commission” or “SEC”) respectfully submits the following Distribution Plan:

I. INTRODUCTION

A. Background

1. On May 15, 2008, the Commission brought a civil insider trading case alleging that Christian De Colli (“De Colli” or “Defendant”), a resident of Rome, Italy, made purchases of the common stock and call options of DRS Technologies, Inc. (“DRS”) on the basis of non-public information in the days and weeks preceding public disclosure in an article that appeared in the Wall Street Journal (“WSJ”) on May 8, 2008, of advanced negotiations for the purchase of DRS by Finmeccanica SpA (“Finmeccanica”), an Italian aerospace and defense company, at a “significant premium” to DRS’s current stock price. DRS issued a press release on May 8, 2008 confirming the substance of the WSJ article. After the disclosures, DRS’s stock price jumped

about 16 percent over the previous day's closing price; De Colli liquidated his positions and made profits of over \$2.1 million.

2. On May 30, 2008, the Court issued a Preliminary Injunction Freezing Assets and Granting Other Relief, freezing De Colli's financial and brokerage accounts, including his account at E*Trade Securities, LLC ("E*Trade"), which was used to transact the suspicious trades.

B. The Distribution Fund

3. On October 23, 2008, the Court entered a Final Judgment by default as to De Colli pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, permanently restraining him from violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder. Pursuant to the Final Judgment, the Defendant was held liable for disgorgement of \$2,161,818.42, prejudgment interest in the amount of \$19,861.72 and a civil penalty in the amount of \$2,161,818.42, for a total of \$4,343,498.56. The Court also ordered that, in partial satisfaction of the obligation to pay disgorgement, prejudgment interest and civil penalty, Defendant would forfeit all funds and assets within his E*Trade account. On November 5, 2008, \$2,615,585.30 (the "Distribution Fund") was deposited by the Clerk of the Court into an interest-bearing account with the Court Registry Investment System ("CRIS"), account number 1:08-cv-04520-PAC, under the case name designation *Securities and Exchange Commission v. De Colli*. As of September 9, 2013, the balance in this account was \$2,612,032.80.

C. Appointment of Damasco & Associates LLP as Tax Administrator

4. The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

5. On February 13, 2009, the Court approved the appointment of Damasco & Associates LLP (“Damasco”) to fulfill the tax obligations of the Distribution Fund. Pursuant to that Order, the Tax Administrator is required to pay taxes in a manner consistent with treatment of the Distribution Fund as a QSF and is to be compensated for the tax services provided. The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator’s duties will be paid by the Distribution Fund in accordance with the agreement between the Commission and the Tax Administrator.

II. IDENTIFICATION OF COUNTER-PARTY

6. The Commission proposes to distribute the De Colli Fair Fund to injured investors who sold call options in DRS from April 15, 2008 through May 7, 2008. Sellers of common stock shares will not be compensated, as the Commission believes it would be practically impossible to identify these investors and the amount of harm they may have suffered would be speculative at best. *See* Declaration of Stuart Jackson (attached as Exhibit B to the SEC’s Memorandum of Law), for a more in-depth explanation.

7. The Commission staff established the DRS options positions sold by each Counter-Party¹ to the Defendant from April 15, 2008 through May 7, 2008 through documentation produced by various brokerage firms, stock exchanges, and the Counter- Parties.

¹ A “Counter-Party” is defined as a person or firm who sold call option contracts in the securities of DRS from April 15, 2008, through May 7, 2008, which options were purchased by De Colli.

8. After reviewing and analyzing relevant trading activity that took place during the time period of the illegal trading activity, the Commission staff identified individuals and firms that executed the other side of the trades (the “Counter-Parties”) undertaken by the Defendant.

9. Further, with the assistance of the stock exchanges, the Commission staff obtained information from the firms to determine the identities of the actual traders who suffered identifiable losses as a result of the illegal trading by the Defendant.

10. Finally, the Commission verified the names and contact information of each of the Counter-Parties to establish the accuracy of the trading data by directly contacting each Counter-Party via a letter. The letter provided a detailed explanation that the Commission was considering a potential distribution of profits from the trading activity that violated the securities laws and that based upon trading records, the Counter-Party may be eligible for a distribution of funds. To ensure the accuracy of the Commission staff’s initial determination, the letter further requested that the Counter-Party voluntarily complete an acknowledgement and attestation form and a two-part questionnaire, which was signed under penalty of perjury, and return the same to the Commission staff with documentation that supported the Counter-Parties’ responses.

III. CALCULATION OF DISTRIBUTIONS

11. Based upon the analysis conducted by the Commission’s expert, Stuart Jackson, *see* Declaration of Stuart Jackson, distributions to Counter-Parties are calculated on DRS call options positions sold by the Counter-Parties to Defendant from April 15, 2008 to May 7, 2008.

12. The Commission’s expert identified various Counter-Parties that were financially harmed because they sold call options to the Defendant at prices that were too low, given the material, non-public information the Defendant allegedly had.

13. The Commission's expert calculated the approximate financial harm suffered by the Counter-Parties by using the decline in the value of their short positions resulting from trades with the Defendant on the day the non-public information was released. The material non-public information was revealed regarding DRS before the markets opened on May 8, 2008. Also, as counter-parties usually hedge their positions, it is appropriate to net from this decline in value an estimate of the Counter-Parties' profits from these hedges.²

14. The process of calculating the approximate financial harm to the Counter-Parties was a six-step process. First the Commission's expert worked with Commission staff to identify the Counter-Parties to all Defendant's trades in DRS between April 15, 2008 and May 7, 2008.

15. Second, the Commission's expert identified the loss to each Counter-Party on May 8, 2008 from the positions acquired from these trades.

16. Third, the Commission's expert identified other positions in DRS common stock and options that each Counter-Party had that declined in value on May 8, 2008, and measured those losses.

17. Fourth, the Commission's expert identified positions in DRS common stock and options that each Counter-Party had that increased in value on May 8, 2008 and measured these gains.

18. Fifth, the Commission's expert allocated these gains to the two sets of losses (those resulting from trades with the Defendant and those resulting from other trades) for each Counter-Party in proportion.

19. Sixth, for each Counter-Party, the Commission's expert subtracted from its losses identified in the first step (losses due to positions acquired due to trades with the Defendant) its

² A hedge is an investment made in order to reduce the risk of adverse price movements in a security (either stock or options) by taking an offsetting position in the same or a related security.

proportionate share of profits identified in the fifth step to get a measure of approximate financial harm for the Counter-Party.

20. More specifically, the Commission's expert calculated the distributions to the Counter-Parties on DRS call option positions sold to the Defendant between April 15, 2008 and May 7, 2008 when the Defendant was allegedly in possession of inside information through the following formula (the "Distribution Formula"):

Distribution Formula

- (i) The difference between the mid-point of the call option closing bid and the call option closing ask on May 8, 2008 and the mid-point of the call option closing bid and the call option closing ask on May 7, 2008;³ multiplied by the number of call options multiplied by 100, which is the number of shares covered by the option contract; and
- (ii) Less any profit on any hedge positions realized by such Counter-Party (the "Hedge Deduction," as defined in paragraphs 21 through 22 below).

Hedge Deduction

21. The calculated distribution amounts include the Hedge Deduction so that Counter-Parties do not receive a windfall profit. For purposes of this distribution, a hedge for the DRS trades is defined as any position in DRS common stock, put options, or call options held at the close of business on the day before May 7, 2008 that increased in value on May 8, 2008. The Hedge Deduction was calculated in the following manner:

³ As trades usually execute within the bid-ask spread, the midpoint of the bid-ask spread at the close of trading is an appropriate measure of the price of the option at the end of the day. The difference between the price on May 8 and that on May 7 measures the change in the call option value associated with the release of the non-public information.

- (A) The Commission staff identified the Counter-Party to each of the Defendant's purchases of DRS call options (executed between April 15, 2008 and May 7, 2008). Commission staff contacted each Counter-Party to confirm with the Commission staff the amount of their specific call option trades with the Defendant. For each Counter-Party that responded, the losses were calculated on those trades due to the non-public information, using the formula described in paragraph 20(i) above ("A" or the "Loss to Counter-Party on Defendant's Trades");
- (B) For each Counter-Party that provided the Commission staff with a summary of their holdings of DRS call options, put options and common stock, the Commission's expert calculated their holdings at the close of business on the day before May 8, 2008. The Commission's expert identified those holdings where the Defendant was **not** the counter-party and that suffered losses on May 8, 2008. The Commission's expert calculated the value of these losses as the change in the price of the security between the close of trading on May 8, 2008 and May 7, 2008 multiplied by the number of shares covered by the asset – one in the case of common stock and 100 in the case of an option contract ("B" or the "Loss to Counter-Party on Non-Defendant Trades")⁴;
- (C) The Commission's expert identified those holdings in DRS stock or options that experienced gains on May 8, 2008 (the hedge). Gains were calculated ("C" or "Total Hedging Profits") using the change in value formula described in paragraph 21(B) above; and

⁴ For option contracts, the Commission's expert used the mid-point of the option closing bid and the option closing ask as the closing price and for the common stock the Commission's expert used the closing price.

(D) A proportional share of the Total Hedging Profits were deducted from the Loss to Counter-Party on Defendant Trades, based on the proportion of these to the Loss to Counter-Party on Non-Defendant Trades to determine the Hedge Deduction ("D"), as follows: (i) the percentage calculated by dividing the Loss to Counter-Party on Defendant Trades by the total amount of these losses and the Loss to Counter-Party on Non-Defendant Trades; (ii) multiplied by the Total Hedging Profits — $(A / (A + B)) \times C = D$.

22. Thus, if a Counter-Party sold ten DRS call options to the Defendant, and these call options were worth \$3.40 at the close on May 7 (the day before the DRS Event Date) and \$9.85 at the close on May 8, the Loss to Counter-Party on Defendant Trades would be calculated as follows: $((\$9.85 - \$3.40) \times (10 \times 100))$ for a loss of \$6,450. If the Loss to Counter-Party on Non-Defendant Trades was \$4,300, then the proportional share of the Total Hedging Profits would be 60% $(\$6,450 / (\$6,450 + \$4,300))$. If, in this example, Total Hedging Profits were \$5,000, then 60% or \$3,000 (the Hedge Deduction) would be deducted from the Loss to Counter-Party on Defendant Trades (\$6,450) and \$3,450 would be distributed to such Counter-Party.

23. Exhibit 1, labeled "Distribution Amount Summary," details: (a) the results of the Distribution Formula; (b) the loss, if any, experienced by each Counter-Party, and (c) the Commission's proposed distribution for each investor without specific identifying information as to the identity of the Counter-Parties. Exhibit 1 is attached to the *Declaration of Stuart Jackson*.

IV. NOTICE PACKET AND NOTICE TO CLAIMANTS

24. Within 30 days from the Court's approval of the Distribution Plan, each Counter-Party that the Commission staff has identified after reviewing trading data and contacting various

stock exchanges will be sent a notice packet (the “Notice Packet”) that will contain the following:

- (i) Notice of Plan to Distribute Funds to Counter-Parties that will provide an overview of the objection and distribution process;
- (ii) Distribution Plan;
- (iii) Declaration of Stuart Jackson with Distribution Amount Summary; and
- (iv) Order Establishing Fair Fund, Approving the Distribution Plan and Establishing Notice Procedures.

**V. ADMINISTRATIVE PROVISIONS AND PAYMENT
TO COUNTER-PARTIES**

25. The Counter-Parties will have sixty (60) days from the Court’s approval of the Distribution Plan to submit any objections to the proposed distribution. Any Counter-Party wishing to object to the Distribution Plan must do so in writing by filing their objections with the Court. The Counter-Party must clearly explain his/her/its disagreement with the Distribution Plan and must provide all relevant supporting documentation to the Clerk of the Court for the Southern District of New York, with copies to Judge Paul A. Crotty and Commission staff. A failure to properly and timely object to the proposed Distribution Plan shall permanently waive the Counter-Party’s right to object. The burden of proof in any objection shall be upon the Counter-Party.

26. Within ninety (90) days from the date of the order approving the Distribution Plan, the Commission staff will attempt to resolve any objections by Counter-Parties and thereafter, will file with the Court a response by the Commission staff identifying any unresolved objections.

27. A hearing date, if necessary, to hear any unresolved objections may be set by the Court thereafter and the Commission will give notice to Counter-Parties of said date.

28. After the Court has ruled on any objections or if there are no objections, the Commission will file a Motion to Disburse Funds to Pay Counter-Parties with the Court.

29. Once the Court issues the final disbursement order, the Commission staff will provide the Clerk of the Court with names, addresses, and amounts to be disbursed, and the Clerk shall cause checks to be drawn on the CRIS account and issued to the Counter-Parties in the amounts specified.

30. Each check issued by the Clerk will state on the face of the check that it is valid for one year. After one year from the date on the distribution check, the Commission staff will contact the Clerk to obtain information regarding the amount of all uncashed checks. The amount of all uncashed checks shall be returned to the Distribution Fund.

31. Forty-five (45) days after the remittance of the checks, the Commission staff shall obtain information from the Clerk of the Court concerning checks that have not been negotiated. The Commission staff shall then undertake good faith efforts for thirty (30) days to locate and contact the intended recipients of the uncashed checks to ensure that the intended recipients have a reasonable opportunity to participate in the distribution.

32. Upon receipt and deposit of the distribution payment by a Counter-Party, such Counter-Party shall be deemed to have released any and all claims that such Counter-Party may have against the Commission, its employees, agents, and attorneys, in connection with the Distribution Plan, and shall be deemed enjoined from prosecuting or asserting any such claims.

33. The Commission staff will make arrangements for the final payment of taxes and tax-related fees and submit a final report to the Court prior to termination of the Distribution

Fund. The 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.

34. The Commission staff and the Tax Administrator may request from the Clerk of the Court any account information relating to the funds held in the CRIS account that may be required for the final report, including providing copies of account statements that the Commission staff or Tax Administrator may request.

35. The Distribution Fund shall be eligible for termination, after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees have been paid; and (3) all remaining funds have been paid to the Commission for transfer to the United States Treasury.

36. If for any reason funds remain in the Distribution Fund six months after the Court has approved the final accounting, the Commission staff will make arrangements with the Clerk to have the remaining funds remitted to the Commission for transfer to the United States Treasury. Such payment shall be mailed to: Enterprise Services Center, Accounts Receivable Branch, 6500 South MacArthur Boulevard, HQ Bldg., Room 181, AMZ-341, Oklahoma City, OK 73169 and to be accompanied by a letter identifying the caption and civil action number of this case and the name of this Court and indicating that payment is made pursuant to this Court's order and that the funds are being remitted for transfer by the Office of Financial Management, Securities and Exchange Commission, to the United States Treasury. A copy of the cover letter and money order or check shall be sent to Nichola L. Timmons, Securities and Exchange Commission, Office of Distributions, 100 F Street, N.E., Washington, DC 20549-5631.

EXHIBIT B

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

Christian De Colli,

Defendant.

Civil Action No. 1:08cv04520-PAC

Related Case No. 1:08cv05509-PAC

DECLARATION OF STUART JACKSON

Pursuant to 28 U.S.C. § 1746, I submit this Declaration in Support of Plaintiff Securities and Exchange Commission's Motion to Establish Fair Fund, Approve Distribution Plan and Establish Notice Procedures. This Declaration is based upon my personal knowledge, and I would be able to testify competently as to the matters addressed herein.

1. I am a Financial Economist in the Division of Economic and Risk Analysis ("DERA") of the Securities and Exchange Commission ("SEC" or "Commission"). I am responsible for, among other things, performing financial and economic analyses to assist the staff of the Enforcement Division of the Commission ("Enforcement staff") in investigations and litigations. I have previously assisted in other matters in reviewing whether fraudulent conduct

alleged by the Commission caused any financial harm to the investing public and the extent of the harm caused to various investors.

2. With respect to this case, *SEC v. De Colli*, the Commission alleged that the Defendant, Christian DeColli (“DeColli” or “Defendant”), made purchases of common stock¹ and call options of DRS Technologies, Inc. (“DRS”) while in possession of material, non-public information, in violation of federal securities laws. I have been asked by the Enforcement staff to review and determine whether any of Defendant DeColli’s counter-parties, persons or firms who sold call option contracts in the securities of DRS from April 15, 2008 through May 7, 2008, which options were purchased by the Defendant, were financially harmed. I also was asked to estimate the extent to which any counter-party was harmed.

3. To that end, I have reviewed and analyzed various documents relating to the purchase and sale of call options by the Defendant, including spreadsheets and trading data provided by various clearing organizations, exchanges and counter-parties.

¹ The Commission does not seek to compensate common stock holders in this instance. When an insider transacts options it is often the case that the market-maker (counter-party) creates the options out of whole cloth. In those instances, but-for the insider’s transaction, the market-maker would not have created that security and would not have suffered a loss. Alternatively, when an insider transacts in common stock the harmed market participants are practically impossible to identify. In instances when an insider purchases common stock (in order to benefit from the release of positive information) there are two types of potentially harmed market participants. The first type includes participants who did not purchase the stock because their bids were crowded out by the insider (“But-For Purchasers”). This type of market participant is harmed if the insider’s action caused them not to own shares when the inside information became public. The second type includes participants who would not have sold had it not been for the insider’s trades (“But-For Sellers”). In the but-for-world these sellers would not have sold their stock and are harmed if the insider’s action caused them not to own shares when the inside information became public. Even if one could successfully tie the execution of a sell limit order and the absence of an execution of a buy limit order to trades by the insider, there is no reason to expect this activity to be static. For example, the But-For Purchaser whose orders were not executed may have resubmitted these orders. And the initial But-For Seller may have subsequently sold shares to another market participant despite the insider’s actions. In this dynamic model we can think of the effect of the insiders’ trades cascading through numerous investors. So while it is possible that stock market participants were harmed by the actions of the insider, DERA believes that it would be practically impossible to identify these harmed participants.

4. Based upon my review, I have identified various counter-parties that were financially harmed because they sold call options to the Defendant at prices that were too low, given the non-public information the Defendant allegedly had.

5. I have calculated the approximate financial harm suffered by the counter-parties by using the decline in the value of their short positions resulting from trades with the Defendant on the day the material, non-public information was released. The material non-public information was revealed regarding DRS before the markets opened on May 8, 2008. Also, as counter-parties usually hedge their positions, it is appropriate to net from this decline in value an estimate of the counter-parties' profits from these hedges.²

6. The process of calculating the approximate financial harm to the counter-parties was a six-step process. First, I worked with the Enforcement staff to identify the counter-party to all trades by the Defendant in DRS between April 15, 2008 and May 7, 2008. Second, I identified the loss to each counter-party on May 8, 2008 from the positions acquired from these trades. The material non-public information was revealed before the markets opened on May 8, 2008. Third, I identified other positions in DRS common stock and options that each counter-party had that declined in value on May 8, 2008, and measured these losses. Fourth, I identified positions in DRS common stock and options that each counter-party had that increased in value on May 8, 2008 and measured these gains. Fifth, I allocated these gains to the two sets of losses (those resulting from trades with the Defendant and those resulting from other trades) for each counter-party in proportion. Sixth, for each counter-party, I subtracted from its losses identified in the first step (losses due to positions acquired due to trades with the Defendant) its

² A hedge is an investment made in order to reduce the risk of adverse price movements in a security (either stock or options), by taking an offsetting position in the same or a related security.

proportionate share of profits identified in the fifth step to get a measure of approximate financial harm for the counter-party.

7. More specifically, I calculated the distributions to the counter-parties on DRS call option positions they sold to the Defendant between April 15, 2008 and May 7, 2008 through the following formula (the "Distribution Formula"):

- (i) the difference between the mid-point of the call option closing bid and the call option closing ask on May 8, 2008 and the mid-point of the call option closing bid and the call option closing ask on May 7, 2008 multiplied by the number of call options multiplied by 100 (which is the number of shares covered by the option contract);³ and
- (ii) less any profit on any hedge positions realized by such counter-party (the "Hedge Deduction," as defined in paragraphs 8 (A) through 8 (D) below). The calculated distribution amounts include the Hedge Deduction so that counter-parties do not receive a windfall profit.

8. For purposes of this distribution, a hedge is defined as any position in DRS common stock, put options, or call options held at the close of business May 7, 2008 that increased in value on May 8, 2008. The Hedge Deduction was calculated in the following manner:

- (A) The Enforcement staff identified the counter-party to each of the Defendant's purchases of DRS call options (executed between April 15, 2008 and May 7, 2008). Enforcement staff contacted each counter-party regarding their specific call option trades with the Defendant. For

³ As trades usually execute within the bid-ask spread, the midpoint of the bid-ask spread at the close of trading is an appropriate measure of the value of the option at the end of the day. The difference between the midpoint on May 8 and that on May 7 measures the change in the call option value associated with the release of the non-public information.

each counter-party that responded, I calculated the losses on those trades due to the non-public information, using the formula described in paragraph 7 (i) above ("A" or the "Loss to Counter-Party on Defendant Trades");

- (B) For each counter-party that provided the Enforcement staff with a summary of their holdings of DRS call options, put options and common stock, I calculated their holdings at the close of business on May 7, 2008. I identified those holdings where the Defendant was **not** the counter-party and that suffered losses on May 8, 2008. I calculated the value of these losses as the change in the price of the security between the close of trading on May 8, 2008 and May 7, 2008 multiplied by the number of shares covered by the asset – one in the case of common stock and 100 in the case of an option contract ("B" or the "Loss to Counter-Party on Non-Defendant Trades")⁴;
- (C) I identified those holdings in DRS stock or options that experienced gains on May 8, 2008 (the hedge). I calculated gains ("C" or "Total Hedging Profits") using the change in value formula described in paragraph 8 (B) above; and
- (D) A proportional share of the Total Hedging Profits were deducted from the Loss to Counter-Party on Defendant Trades, based on the proportion of these to the Loss to Counter-Party on Non-Defendant Trades to determine the Hedge Deduction ("D"), as follows: (i) the

⁴ For option contracts I used the mid-point of the option closing bid and the option closing ask as the closing price and for the common stock I used the closing price.

percentage calculated by dividing the Loss to Counter-Party on Defendant Trades by the total amount of these losses and the Loss to Counter-Party on Non-Defendant Trades; (ii) multiplied by the Total Hedging Profits — $(A / (A + B)) \times C = D$.

9. Thus, if a counter-party sold ten DRS call options to the Defendant, and these call options were worth \$3.40 at the close on May 7 and \$9.85 at the close on May 8, the Loss to Counter-Party on Defendant Trades would be calculated as follows: $((\$9.85 - \$3.40) \times (10 \times 100))$ for a loss of \$6,450. If the Loss to Counter-Party on Non-Defendant Trades was \$4,300, then the proportional share of the Total Hedging Profits would be 60% $(\$6,450 / (\$6,450 + \$4,300))$. If, in this example, Total Hedging Profits were \$5,000, then 60% or \$3,000 (the Hedge Deduction) would be deducted from the Loss to Counter-Party on Defendant Trades (\$6,450) and \$3,450 would be distributed to such Counter-Party.

10. Based upon my review of the documents and the distribution formula described above, I have created Exhibit 1 attached hereto and labeled, "Distribution Amount Summary," which details the results of the Distribution Formula, the loss, if any, experienced by each counter-party, and the Commission's proposed distribution for each investor without specific identifying information as to the identity of the counter-parties.

11. Based upon my professional experience, this is a reasonable approach in compensating the counter-parties to the Defendant who suffered financial harm as a result of the Defendant's alleged fraudulent conduct. The Commission has previously applied the methodology described above in calculating distributions to counter-parties based on alleged insider trading of option contracts.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

9/16, 2013 in Boston, MA.

A handwritten signature in black ink, appearing to read 'Stuart Jackson', written over a horizontal line.

Stuart Jackson

Exhibit 1. Distribution Amount Summary

SEC v. DeColli

Counter-Party	Counter-Party Losses				Counter-Party Gains (Hedge)		Distribution Amount
	Loss to Counter-Party on Defendant Trades (A)	Loss to Counter-Party on Non-Defendant Trades (B)	Total Counter-Party Losses (A+B)	Losses on Defendant Trades as % of Total (A/ (A+B))	Total Hedging Profits (C)	Hedge Deduction (D)	
Counter-Party 1	\$38,130	\$120,630	\$158,760	24.0%	\$106,905	\$25,676	\$12,454
Counter-Party 2	\$108,408	\$193,526	\$301,933	35.9%	\$231,675	\$83,182	\$25,226
Counter-Party 3	\$60,663	\$16,705	\$77,368	78.4%	\$49,507	\$38,818	\$21,845
Counter-Party 4	\$3,913	\$487,265	\$491,177	0.8%	\$287,383	\$2,289	\$1,623
Counter-Party 5	\$113,463	\$1,147,290	\$1,260,753	9.0%	\$1,181,994	\$106,375	\$7,088
Total	\$324,575						\$68,236

EXHIBIT C

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

Amount of proposed distribution to you: _____

If “None” is stated above, then according to the Commission’s calculations you have not (your firm has not) suffered a loss and are not (is not) eligible to receive a distribution.

If an amount is specified above, then according to the Commission’s calculations you have (your firm has) suffered a loss and are (is) eligible to receive a distribution.

If you believe that the above figure is correct and you do not have any objection to the proposed distribution or Distribution Plan, you do not have to take any action at this time. However, you should keep the Commission staff’s contact person (see below) advised of any change of address.

If you believe that the above figure is incorrect, or if you have any objection to the proposed distribution or the Distribution Plan, you must file any objection with the Clerk of the Court and send a copy to Judge Paul A. Crotty and the Commission. Documents you believe may support your objection should be attached.

Any objection and the supporting documentation must be filed no later than _____, [date 60 days after entry of order approving plan of distribution] by mail to:

- 1) The Clerk of Court:
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312
Attn: Civil Clerk’s Office
(212) 805-0136

With a copy sent to:

- 2) The Honorable Paul A. Crotty
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

And

3) The Commission:

Nichola L. Timmons, Esq.
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5631
Telephone: (202) 551-4456
Fax: (703) 813-9728
Email: timmonsn@sec.gov

The intent of this distribution is to compensate investors for their losses. Please note that the amount of your proposed distribution, if any, may increase or decrease based upon the Court's ruling on any objections filed by you or others.

Within ninety (90) days from the date of the order approving the Distribution Plan, the Commission staff will attempt to resolve any objections by Counter-Parties and thereafter, will file with the Court a response by the Commission staff identifying any unresolved objections. If any objections remain unresolved, the Court may set a hearing date. If there are no objections, or after all objections are resolved either by the Commission staff or at a hearing, the Commission will file a Motion to Disburse Funds to Pay Counter-Parties with the Court. Once the Court issues the final order for disbursement, the Clerk of the Court will issue checks to eligible Counter-Parties in accordance with that order.

If you have any questions about the Distribution Plan or this Notice, please call the Commission staff's contact person:

**Susan S. Pecaro
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5631
(202) 551-4489
pecaros@sec.gov**