

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

V.

**GIANLUCA DI NARDO,
CORRALERO HOLDINGS, INC.
OSCAR RONZONI
PAOLO BUSARDÒ,
TATUS CORP., and
A-ROUND INVESTMENT, SA**

Defendants.

Case No. 1:08-cv-06609-PAC

Related Case: 08-cv-4520-PAC

**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 July 25, 2008, the Commission brought this civil insider trading case seeking, among other things, permanent injunctive relief against one or more unknown purchasers of call options for the common stock of DRS Technologies, Inc. (“DRS”) and American Power Conversion

Corp. (“APCC”). The Commission alleged that the Unknown Purchaser or Purchasers made well-timed purchases of call options of both corporations in the days and weeks immediately preceding public disclosures and announcements relating to these companies’ ultimate acquisitions. In both cases, there was no public information available concerning the acquisitions before the purchases of the call options. On August 18, 2008, the Court issued a Preliminary Injunction Freezing Assets and Granting Other Relief, thereby freezing the accounts of the unknown purchasers at UBS AG in Zurich, Switzerland (“UBS Zurich”).

Subsequently, on October 6, 2010, the Commission filed its First Amended Complaint, identifying the previously unknown purchasers as Gianluca DiNardo (“DiNardo”), his investment vehicle Corralero Holdings, Inc. (“Corralero Holdings”), and four other Defendants: Oscar Ronzoni (“Ronzoni”), Paolo Busardò (“Busardò”), Tatus Corp. (“Tatus”), and A-Round Investment SA (“A-Round”).

B. Procedural Background

On October 12, 2010, with the consent of Defendants Di Nardo and Corralero Holdings, without admitting or denying the allegations of the Amended Complaint, the Court entered Final Judgment as to both Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure permanently restraining them 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, Defendants were jointly and severally liable for disgorgement of \$2,110,600.00, prejudgment interest in the amount of \$191,345.77 and a civil penalty in the amount of \$700,000.00, for a total of \$3,001,945.77. On the same date, the Court entered a Consent Order for Payment of Judgment from Frozen Funds, requiring UBS Zurich to transfer \$3,001,945.77 to the Clerk of the Court from the frozen accounts in satisfaction of the Final Judgments entered

against the Defendants. The Clerk of the Court then deposited the funds into an interest-bearing account with the Court Registry Investment System (“CRIS”), under the case name designation *Securities and Exchange Commission v. Gianluca Di Nardo, et al.*, Account No. 1:08cv06609-1.

On April 19, 2011, with the consent of the remaining Defendants, and without admitting or denying the allegations of the Amended Complaint, the Court entered Final Judgments as to Defendants Ronzoni, Busardò, Tatus and A-Round permanently restraining them from violations of Section 10(b) of the Exchange Act and Rule 10b-5. Pursuant to these Final Judgments, these Defendants were jointly and severally liable for disgorgement of \$967,699.97, prejudgment interest in the amount of \$8,689.00 and a civil penalty in the amount of \$483,849.99 for a total amount of \$1,460,238.96. On the same date, the Court entered a Consent Order for Payment of Judgment from Frozen Funds, requiring UBS Zurich to transfer \$1,460,238.96 to the Clerk of the Court from the frozen accounts in satisfaction of the Final Judgments entered against these Defendants.

These monies were also paid to the Clerk of the Court, and the funds were also deposited into an interest-bearing account with the CRIS under the case name designation *Securities and Exchange Commission v. Gianluca Di Nardo, et al.*, Account No. 1:08cv06609-6. As of September 9, 2013, the balance in the two accounts totaled \$4,459,629.35 (the “Distribution Fund”).

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 June 24, 2011, 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 Defendants paid civil penalties as part of the settlements. 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 APCC and DRS who sold call options that were purchased by the Defendants 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 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.

¹ A “Counter-Party” is defined as a person or firm who sold call option contracts in the securities of DRS from April 29, 2008 through May 7, 2008 and/or sold call option contracts in the securities of APCC from September 21, 2006 through September 22, 2006, which options were purchased by Defendants.

- (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 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
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Plaintiff,

V.

**GIANLUCA DI NARDO,
CORRALERO HOLDINGS, INC. ,
OSCAR RONZONI,
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TATUS CORP., and
A-ROUND INVESTMENT, SA**

Defendants.

Civil Action No.
1:08cv006609-PAC

Related Case No.
1:08cv4520-PAC

DISTRIBUTION PLAN

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

I. INTRODUCTION

A. Background

1. On July 25, 2008, the Commission brought a civil insider trading case alleging that an unknown Purchaser or Purchasers made well-timed purchases on the basis of non-public information of call options of DRS Technologies, Inc. (“DRS”) and American Power Conversion Corp. (“APCC”) in the days and weeks immediately preceding public disclosures and announcements relating to these companies’ ultimate acquisitions. In both cases, there was no public information available concerning the acquisitions before the purchases of the call options.

2. On August 18, 2008, the Court issued a Preliminary Injunction Freezing Assets and Granting Other Relief, thereby freezing the accounts involved in the suspicious trading at UBS AG in Zurich, Switzerland (“UBS Zurich”).

3. Subsequently, on October 6, 2010, the Commission filed its First Amended Complaint, identifying the previously unknown purchasers as Gianluca Di Nardo (“DiNardo”), his investment vehicle Corralero Holdings, Inc. (“Corralero Holdings”), and four other Defendants: Oscar Ronzoni (“Ronzoni”), Paolo Busardò (“Busardò”), Tatus Corp. (“Tatus”), and A-Round Investment SA (“A-Round”).

B. The Distribution Fund

4. On October 12, 2010, with the consent of Defendants Di Nardo and Corralero Holdings, without admitting or denying the allegations of the Amended Complaint, the Court entered Final Judgment as to both Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure permanently restraining them 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 Defendants were jointly and severally liable for disgorgement of \$2,110,600.00, prejudgment interest in the amount of \$191,345.77 and a civil penalty in the amount of \$700,000.00, for a total of \$3,001,945.77. On the same date, the Court entered a Consent Order for Payment of Judgment from Frozen Funds, requiring UBS Zurich to transfer \$3,001,945.77 to the Clerk of the Court from the frozen accounts in satisfaction of the Final Judgment entered against the Defendants. The Clerk of the Court then deposited the funds into an interest-bearing account with the Court Registry Investment System (“CRIS”), account number 1:08cv-06609-1, under the case name designation *Securities and Exchange Commission v. Gianluca Di Nardo, et al.*

5. On April 19, 2011, with the consent of the remaining Defendants, and without admitting or denying the allegations of the Amended Complaint, the Court entered Final Judgments as to Defendants Ronzoni, Busardò, Tatus and A-Round, permanently restraining them from violations of Section 10(b) of the Exchange Act and Rule 10b-5. Pursuant to these Final Judgments, these Defendants were jointly and severally liable for disgorgement of \$967,699.97, prejudgment interest in the amount of \$8,689.00 and a civil penalty in the amount of \$483,849.99 for a total amount of \$1,460,238.96. On the same date, the Court entered a Consent Order for Payment of Judgment from Frozen Funds, requiring UBS Zurich to transfer \$1,460,238.96 to the Clerk of the Court from the frozen accounts in satisfaction of the Final Judgments entered against these Defendants.

6. These monies were also paid to the Clerk of the Court and the funds were also deposited into an interest-bearing account with the CRIS, account number 1:08cv-06609-6, under the case name designation *Securities and Exchange Commission v. Gianluca Di Nardo, et al.* As of September 9, 2013, the balance of the two accounts totaled \$4,459,629.35 (the “Distribution Fund” or “Di Nardo Distribution Fund”).

C. Appointment of Damasco & Associates LLP as Tax Administrator

7. 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.

8. On June 24, 2011, 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. IDENTIFICATION OF COUNTER-PARTY

9. The Commission proposes to distribute the DiNardo Distribution Fund to injured investors who sold call options in DRS from April 29, 2008 through May 7, 2008 and/or sold call options in APCC from September 21, 2006 through September 22, 2006.

10. The Commission staff established the DRS options positions sold by each Counter-Party¹ to the Defendants from April 29, 2008 through May 7, 2008, and APCC options positions sold by each Counter-Party to the Defendants from September 21, 2006 through September 22, 2006 through documentation produced by various brokerage firms, stock exchanges, and the Counter Parties.

11. 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 Defendants.

12. 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 Defendants.

13. 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

¹ A "Counter-Party" is defined as a person or firm who sold call option contracts in the securities of DRS from April 29, 2008 through May 7, 2008, and/or who sold call option contracts in the securities of APCC from September 21, 2006 through September 22, 2006, which options were purchased by Defendants.

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

14. 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 Defendants from April 29, 2008 through May 7, 2008, and/or on APCC call options positions sold by the Counter-Parties to Defendants from September 21, 2006 through September 22, 2006.

15. 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 Defendants 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 and for APCC before the markets opened on October 30, 2006. The Commission's expert referred to these two dates as the "Event Dates." 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

16. The process of calculating the approximate financial harm to the Counter-Parties was a six-step process. Each step of the process was completed separately for trading in the DRS and

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.

APCC securities. First, the Commission's expert worked with Commission staff to identify the Counter-Parties to all Defendants' trades in DRS between April 29, 2008 and May 7, 2008 and in APCC from September 21, 2006 through September 22, 2006.

17. Second, the Commission's expert identified the loss to each Counter-Party on the Event Date (May 8, 2008 for DRS and October 30, 2006 for APCC) from the positions acquired from these trades.

18. Third, the Commission's expert identified other positions in DRS or APCC common stock and options that each Counter-Party had that declined in value on the Event Date, and measured those losses.

19. Fourth, the Commission's expert identified positions in DRS or APCC common stock and options that each Counter-Party had that increased in value on the Event Date and measured these gains.

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

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

22. More specifically, the Commission's expert calculated the distributions to the Counter-Parties on DRS and APCC call option positions they sold to the Defendants when the Defendants were allegedly in possession of inside information through the following formula (the "Distribution Formula"):

Distribution Formula- DRS

- (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 23 through 24 below).

Distribution Formula – APCC

- (i) The difference between the mid-point of the call option closing bid and the call option closing ask on October 30, 2006 and the mid-point of the call option closing bid and the call option closing ask on October 27, 2006; 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 23 through 24 below).

Hedge Deduction

23. 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 the Event Date that increased in value on the Event Date.

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, for DRS, and the difference between the price on September 21 and September 20 for APCC, measures the change in the call option value associated with the release of the non-public information.

The hedge for APCC is defined similarly. The Hedge Deduction was calculated in the following manner:

- (A) The Commission staff identified the Counter-Party to each of the Defendants' purchases of DRS or APCC call options (executed between April 29, 2008 and May 7, 2008 for DRS transactions and September 21, 2006 through September 22, 2006 for APCC transactions). Commission staff contacted each Counter-Party to confirm with the Commission staff the amount of their specific call option trades with the Defendants. For each Counter-Party that responded, the losses were calculated on those trades due to the non-public information, using the formulas described in paragraph 22 above ("A" or the "Loss to Counter-Party on Defendants' Trades");
- (B) For each Counter-Party that provided the Commission staff with a summary of their holdings of DRS or APCC call options, put options and common stock, the Commission's expert calculated their holdings at the close of business on the day before the Event Date of May 8, 2008 for DRS trades and the last trading day before the Event Date of October 30, 2006 for APCC trades. The Commission's expert identified those holdings where the Defendants were **not** the counter-party and that suffered losses on the Event Date. 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 the Event Date and the trading day before the Event Date 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 or APCC stock or options that experienced gains on the Event Date (the hedge). Gains were calculated ("C" or "Total Hedging Profits") using the change in value formula described in paragraph 23(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 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 — $(A / (A + B)) \times C = D$.

24. Thus, if a Counter-Party sold ten DRS call options to the Defendants, 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 DRS Event Date), 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. Exhibit 1, labeled "Distribution Amount Summary," details: (a) the results of the

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.

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

25. 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:

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

V. ADMINISTRATIVE PROVISIONS AND PAYMENT TO COUNTER-PARTIES

26. 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.

27. 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.

28. 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.

29. 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.

30. 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 accounts and issued to the Counter-Parties in the amounts specified.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 accounts that may be required for the final report, including providing copies of account statements that the Commission staff or Tax Administrator may request.

36. 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.

37. 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.

**GIANLUCA DI NARDO,
CORRALERO HOLDINGS, INC.,
OSCAR RONZONI,
PAOLO BUSARDÒ,
TATUS CORP., and
A-ROUND INVESTMENT, SA**

Defendants.

Civil Action No. 1:08cv06609-PAC

Related Case No. 1:08cv4520-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. Gianluca Di Nardo*, 1:08cv06609 (S.D.N.Y.), the Commission alleged that the Defendants, Gianluca Di Nardo, Corralero Holdings, Inc., Oscar Ronzoni, Paolo Busardò, Tatus Corp., and A-Round Investment, SA (“Defendants”), purchased numerous DRS Technologies, Inc. (“DRS”) call options, and American Power Conversion Corp (“APCC”) call options 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 the Defendants counter-parties, persons or firms who sold call option contracts in the securities of DRS from April 29, 2008 through May 7, 2008, and APCC from September 21, 2006 through September 22, 2006 which options were purchased by the Defendants, 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 Defendants, including spreadsheets and trading data provided by various clearing organizations, exchanges and counter-parties.

4. Based upon my review, I have identified various counter-parties that were financially harmed because they sold call options to the Defendants at prices that were too low, given the non-public information the Defendants 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 Defendants on the day the non-public information was released. The material inside information was made public regarding DRS before the markets opened on May 8, 2008 and for APCC before the markets opened on October 30, 2006. I will refer to these two dates as the

“Event Dates”. 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.¹

6. The process of calculating the approximate financial harm to the counter-parties was a six-step process. I did each step of the processes separately for the trading in the two companies (DRS and APCC). First, I worked with the Enforcement staff to identify the counter-parties to all trades by the Defendants in DRS between April 29, 2008 and May 7, 2008 and in APCC from September 21, 2006 through September 22, 2006. Second, I identified the loss to each counter-party on the Event Date (May 8, 2008 for DRS and October 30, 2006 for APCC) from the positions acquired from these trades. Third, I identified other positions in DRS or APCC common stock and options that each counter-party had that declined in value on the Event Date, and measured these losses. Fourth, I identified positions in DRS or APCC common stock and options that each counter-party had that increased in value on the Event Date and measured these gains. Fifth, I allocated these gains to the two sets of losses (those resulting from trades with the Defendants 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 Defendants) its 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 and APCC call option positions they sold to the Defendants when the Defendants were allegedly in possession of inside information 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 the Event Date (May 8, 2008 for DRS and

¹ 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.

October 30, 2006 for APCC) and the mid-point of the call option closing bid and the call option closing ask on the trading day before the Event Date multiplied by the number of call options multiplied by 100 (which is the number of shares covered by the option contract);² 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 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 the Event Date that increased in value on the Event Date. The hedge for APCC is defined similarly. The Hedge Deduction was calculated in the following manner:

- (A) The Enforcement staff identified the counter-party to each of the Defendants' purchases of DRS or APCC call options (executed when the Defendants allegedly had inside information). Enforcement staff contacted each counter-party regarding their specific call option trades with the Defendants. For 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 or APCC call options, put options

² 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 the Event Date and that on the trading day before the Event Date measures the change in the call option value associated with the release of the non-public information.

and common stock, I calculated their holdings at the close of business on the day before the Event Date. I identified those holdings where the Defendants were **not** the counter-party and that suffered losses on the Event Date. I calculated the value of these losses as the change in the price of the security between the close of trading on the Event Date and the trading day before the Event Date 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")³;

- (C) I identified those holdings in DRS or APCC stock or options that experienced gains on the Event Date (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 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 — $(A / (A + B)) \times C = D$.

³ 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.

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 (the day before the DRS Event Date) and \$9.85 at the close on May 8 (the DRS Event Date), 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 Defendants who suffered financial harm as a result of the Defendants' 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.


Stuart Jackson

SEC v. DiNardo, et al.

Exhibit 1. Distribution Amount Summary

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)	
Trades in DRS							
Counter-Party 1	\$55,073	\$103,688	\$158,760	34.7%	\$106,905	\$37,084	\$17,988
Counter-Party 2	\$12,255	\$207,908	\$220,163	5.6%	\$149,905	\$8,344	\$3,911
Counter-Party 3	\$16,770	\$487,265	\$504,035	3.3%	\$300,240	\$9,989	\$6,781
Counter-Party 4	\$54,825	\$725,770	\$780,595	7.0%	\$63,485	\$4,459	\$50,366
Counter-Party 5	\$225,750	\$1,035,003	\$1,260,753	17.9%	\$1,181,994	\$211,648	\$14,102
Counter-Party 6	\$0						\$0
Counter-Party 7	\$0						\$0
Total DRS	\$364,673						\$93,148
Trades in APCC							
Counter-Party 1	\$58,860	\$2,425,105	\$2,483,965	2.4%	\$2,419,827	\$57,340	\$1,520
Counter-Party 2	\$0						\$0
Counter-Party 3	\$16,350	\$184,865	\$201,215	8.1%	\$352,558	\$28,648	\$0
Counter-Party 4	\$9,810	\$731,460	\$741,270	1.3%	\$549,679	\$7,274	\$2,536
Counter-Party 5	\$0						\$0
Counter-Party 6	\$19,620	\$904,833	\$924,453	2.1%	\$1,547,568	\$32,845	\$0
Counter-Party 7	\$289,940	\$1,737,613	\$2,027,553	14.3%	\$1,998,141	\$285,734	\$4,206
Total APCC	\$394,580						\$8,261
Combined DRS and APCC							
Counter-Party 1	\$113,933					\$94,425	\$19,508
Counter-Party 2	\$12,255					\$8,344	\$3,911
Counter-Party 3	\$33,120					\$38,637	\$6,781
Counter-Party 4	\$64,635					\$11,733	\$52,902
Counter-Party 5	\$225,750					\$211,648	\$14,102
Counter-Party 6	\$19,620					\$32,845	\$0
Counter-Party 7	\$289,940					\$285,734	\$4,206
Total DRS and APCC	\$759,253					\$683,365	\$101,409

EXHIBIT C

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**GIANLUCA DI NARDO,
CORRALERO HOLDINGS, INC. ,
OSCAR RONZONI,
PAOLO BUSARDO,
TATUS CORP., and
A-ROUND INVESTMENT, SA**

Defendants.

Case No. 1:08-cv-06609-PAC

Related Case: 08-cv-4520-PAC

[PROPOSED] NOTICE OF PLAN TO DISTRIBUTE FUNDS TO COUNTER-PARTIES

This Notice has been sent to you to provide you with notice that the Court has approved the U.S. Securities and Exchange Commission’s Distribution Plan (“Distribution Plan”) to distribute the funds collected in this action and currently held by the Clerk of the Court (the “Fair Fund”). These funds were obtained pursuant to a final judgment entered against the defendants in this case. After payment of tax obligations and fees and expenses to the Tax Administrator, the Fair Fund currently contains a principal balance of approximately \$_____, subject to additional tax payments and fees and accrued interest.

A Notice Packet, which includes the following, is being sent to you:

- 1) This Notice;
- 2) The Distribution Plan;
- 3) Declaration of Stuart Jackson with Distribution Amount Summary; and
- 4) The Order Establishing Fair Fund, Approving Distribution Plan and Establishing Notice Procedures;

The Distribution Plan calls for the Fair Fund to be distributed among those persons or entities who sold DRS Technologies, Inc. (“DRS”) call options positions to Defendants between April 29, 2008 through May 7, 2008 and/or sold American Power Conversion Corp. (“APCC”) call options positions to Defendants between September 21, 2006 through September 22, 2006 and who suffered a loss as a result. Your estimated loss, if any, which is shown below in this Notice, was determined by the staff of the U.S. Securities and Exchange Commission (the “Commission”) based upon a Distribution Formula, as set forth in the attached Declaration of

Stuart Jackson, with the exhibit entitled “Distribution Amount Summary.” Mr. Jackson is a financial economist employed by the Commission.

The amount of your proposed distribution, if any, is as follows:

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 Distribution Plan, you must file any objection with the Clerk of the Court and send a copy to Judge 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
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

3) The Commission:

Nichola L. Timmons, Esq.
Securities and Exchange Commission
100 F Street, NE
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**