

1 MATTHEW P. REED
2 DAVID C. RICE
3 Attorneys for Plaintiff
4 Securities and Exchange Commission
5 100 F Street, NE
6 Washington, DC 20548
7 Telephone: 202-551-4511
8 Facsimile: 202-772-9230
9 Email: ReedM@SEC.Gov

6
7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF COLUMBIA**

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10 _____)
11 **SECURITIES AND EXCHANGE**)
12 **COMMISSION,**)
13 **Plaintiff**)
14 **v.**)
15 **DISCOVER CAPITAL HOLDINGS**)
16 **CORP., et al.,**)
17 **Defendants**)

03 Civ. 03-1496(RMC)

**Motion for Order Directing
Plan for Distribution**

18 **MOTION FOR ORDER DIRECTING PLAN FOR DISTRIBUTION**

19 The Securities and Exchange Commission (the "Commission") respectfully requests that
20 this Court enter an order directing a plan for the distribution of funds. This Court has broad
21 discretion to fashion equitable remedies to further its orders and judgments, such as the
22 establishment of a distribution plan. See, e.g., Thompson v. Washington, 551 F.2d 1316 (D.C.
23 Cir. 1997); Securities and Exchange Commission v. Forex Asset Management, 242 F.3d 325 (5th
24 Cir. 2001). A proposed order is attached to this motion. In support of this motion, the
25 Commission states as follows.
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1 On July 9, 2003, the United States Securities and Exchange Commission ("SEC" or
2 "Commission") filed an emergency action in the United States District Court for the District of
3 Columbia to halt an alleged ongoing fraudulent scheme largely aimed at retirees who were
4 customers of brokerages that had gone out of business. The Commission's complaint alleges that
5 the defendants, Eli Dinov, his brother Ari Dinov, and David Rubinov, used spam e-mails and
6 misleading, high pressure sales calls to raise more than \$1.1 million through the sale of private
7 placement shares of New York-based Discover Capital Holdings Corp. ("Discover Capital").
8 Discover Capital was controlled by the individual defendants, through Discover's wholly-owned
9 broker-dealer subsidiary, Indianapolis Securities, Inc. ("Indianapolis Securities").

11 On November 19, 2004, this Court entered final judgments against Discover Capital
12 Holdings Corp., Indianapolis Securities, Inc., and Eli and Ari Dinov, arising from charges that
13 they participated in the fraudulent, unregistered offering of Discover Capital's preferred shares.
14 Without admitting or denying the allegations of the Commission's complaint, Discover Capital
15 and the Dinov brothers agreed to pay a total of \$706,459 in disgorgement, penalties, and
16 prejudgment interest, including a \$120,000 penalty imposed on Ari Dinov. The money to be
17 paid in connection with these final judgments, together with the \$462,000 in disgorgement,
18 penalties, and pre-judgment interest which co-defendant David Rubinov was ordered to pay in
19 March 2004, brings the total amount paid by the defendants in this case to over \$1.1 million.
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22 On December 14, 2005, this Court granted the Commission's motion to appoint Nancy
23 Grunberg, Esquire, of the law firm of Venable, LLP, to act as Distribution Agent for the
24 purposes of distributing all Funds collected in the matter and deposited into the court registry
25 (the "Discover Capital Fund"). In that order, the Court directed that the Distribution Agent
26 distribute funds in accordance with an approved distribution plan. The Commission now seeks
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1 an order approving a distribution plan containing the following provisions as set forth in the
2 proposed Order:

3 **I. Establishing the Discover Capital Custodial Account**

4 The Commission seeks provisions in the order directing that, upon receipt of the
5 Distribution Agent's written request to the Clerk of Court for transfer of funds, and without
6 further order, the Clerk of Court transfer all Funds held in the Discover Capital Fund, less any
7 lawful fees, to a custodial account that satisfies the relevant tax provisions (as described in the
8 proposed order).
9

10 **II. Establishing the Powers and Duties of the Distribution Agent**

11 The Commission seeks provisions in the order providing that the Distribution Agent has
12 the following powers and duties (which are more specifically established in the attached order):
13

- 14 A. The power to establish and administer a custodial account.
- 15 B. The power to retain assistance and be compensated for certain fees, and expenses.
- 16 C. The obligation to issue quarterly and final reports.
- 17 D. The obligation to give the Commission certain notices.

18 **III. Establishing the Claims Procedure**

19 The Commission seeks provisions in the order directing that Distribution Agent
20 administer a Claims Procedure consistent with the provisions identified in the attached order.
21

22 **IV. Establishing the Following Miscellaneous Provisions**

23 The Commission seeks provisions in the order providing that the Plan may be modified
24 only on after consultation with the Commission or notice to the Distribution Agent and on
25 motion to the Court. The Commission also seeks an order providing that the Distribution Agent
26 and her designees, agents and assistants shall be excused from any requirement to post a bond or
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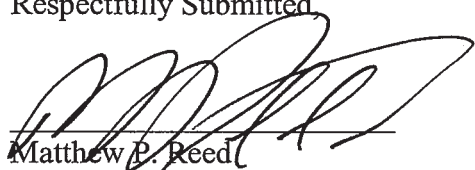
1 other undertaking, and shall not be liable to any person for his/her or their actions hereunder,
2 except upon a finding of misfeasance, gross negligence or reckless disregard of duty

3 **CONCLUSION**

4 WHEREFORE, the Commission respectfully requests that this motion be granted. A
5 proposed order is attached.

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7 Dated June 7, 2006

Respectfully Submitted,

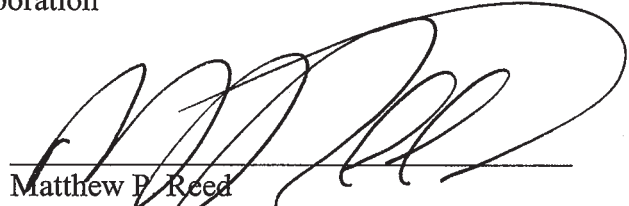
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9 
10 Matthew P. Reed
11 David C. Rice
12 Attorneys for Plaintiff
13 Securities and Exchange Commission
14 100 F. Street, NE
15 Washington, DC 20549-4631
16 (202) 551-4511 (Reed)
17 (202) 772-9230
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CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing Motion for Order Directing Plan for Distribution, was served on June 7, 2006, by mail, on the following:

Ronald J. Brescia
RONALD J. BRESCIA & ASSOCIATES, P.C.
600 Old Country Road
Suite 202
Garden City, NY 11530
(516) 228-3214
Counsel for Discover Capital Holdings Corporation

Executed on June 7, 2006


Matthew P. Reed
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Telephone (202) 551-4511
Facsimile (202) 772-9230

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