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4 **UNITED STATES DISTRICT COURT**
5 **FOR THE DISTRICT OF COLUMBIA**

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**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff

v.

**DISCOVER CAPITAL HOLDINGS
CORP., et al.,**

Defendants

ORDER DIRECTING PLAN FOR DISTRIBUTION

There being a need to set forth a distribution plan approved by this Court, and on motion of Plaintiff the Securities and Exchange Commission ("SEC" or "Commission"), it is hereby

ORDERED that upon receipt of the Distribution Agent's written request to the Clerk of Court for transfer of Funds, and without further order, the Clerk of Court is directed to transfer all Funds held in the Discover Capital Fund, less any lawful fees, to the Discover Capital Custodial Account (discussed below).

ORDERED that the Distribution Agent shall have the following powers and duties:

A. Establish and administer a custodial account.

1. The Distribution Agent shall open an interest bearing account (the "Discover Capital Custodial Account") exclusively to fulfill the Distribution Agent's duties herein, to receive, hold and disburse the Funds

1 transferred from the Discover Capital Fund, and to accrue interest on such
2 Funds. The Discover Capital Custodial Account must be at a Federal
3 Deposit Insurance Corporation-insured bank.

4 2. The Distribution Agent shall invest and reinvest the Funds in the Discover
5 Capital Custodial Account

6 a. Only in the following investments:

7 i. direct obligations of the United States,

8 ii. obligations whose principal and interest are unconditionally
9 guaranteed by the United States, and

10 iii. money market funds authorized to invest solely in direct
11 obligations of the United States;
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13 b. With a primary investment objective of conserving and preserving
14 the principal, and with a secondary investment objective of
15 maximizing investment return.
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17 3. The Distribution Agent, on behalf of the Discover Capital Custodial
18 Account, shall take all necessary steps to coordinate necessary tax filings
19 with Damasco & Associates, which this Court has previously appointed as
20 Tax Administrator in this matter, including the following:

21 a. The Distribution Agent shall take all necessary steps to qualify the
22 Discover Capital Custodial Account to be a taxable "settlement
23 fund," within the meaning of Internal Revenue Code §468B, as
24 amended, and regulations thereunder, including the filing of the
25 elections and statements contemplated by those provisions.
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b. The Distribution Agent shall be designated the “administrator” of the Discover Capital Custodial Account pursuant to Treas. Reg. §1.468B-2(k)(3)(i), and shall satisfy the administrative requirements of Treas. Reg. §1.468B-2, including, but not limited to, (1) obtaining a taxpayer identification number, (2) timely filing of applicable federal, state, and local tax returns and paying taxes reported thereon, and (3) satisfying any relevant tax authority information reporting or withholding requirements imposed on distributions and payments from the Discover Capital Custodial Account.

B. Retainers, Fees, and Expenses.

1. The Distribution Agent, at her discretion, may retain other persons to assist her in carrying out her duties.
2. The Distribution Agent is entitled to be paid monthly from the Discover Capital Custodial Account all reasonable costs, fees, and other expenses incurred in the performance of her duties (including such attorneys’ fees as are incurred by her partners, associates, and legal staff, or any other individual chosen by the Distribution Agent). The Distribution Agent shall be further entitled to compensation for her services (and those of other attorneys working on the matter, at her discretion) at a rate not to exceed \$325.00 per hour for partners; \$210.00 per hour for associates; and \$90.00 per hour for paralegal services, as set forth in the Distribution Agent’s proposal:

- 1 a. Before any such amounts are paid, the Commission shall be given
2 a copy of each payment request, attached to which will be a
3 detailed itemization of the Distribution Agent's costs, fees, and
4 other expenses, five (5) days before submission of such request to
5 the Court, and shall be permitted to submit to the Court for
6 consideration its position as to the reasonableness of the request;
7 and
8
- 9 b. All such requests must be approved by the Court before payment
10 from the Discover Capital Custodial Account shall be made, and
11 the Court shall review the reasonableness of such fees and
12 expenses in determining whether, in its discretion, such payment
13 will be approved.
14

15 C. Reports.

- 16 1. Within the first fifteen (15) days of the end of each calendar quarter, the
17 Distribution Agent shall submit to the Court and the SEC a written report
18 of all Discover Capital Custodial Account receipts, disbursements,
19 accrued income, liabilities, taxes, services, fees, and expenses, together
20 with a copy of Discover Capital Custodial Account bank statements for
21 the months covered by the report.
22
- 23 2. Upon completion of the duties specified herein, the Distribution Agent
24 shall serve upon the SEC and file with the Court a report describing her
25 activities and the distributions made under the Plan.
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1 D. The Distribution Agent shall give the SEC at least five (5) days written notice of
2 any requests, notices or applications to the Court under the Plan.
3

4 **ORDERED** that the Distribution Agent administer the following Claims Procedure.

5 A. The Distribution Agent shall, as provided below, take appropriate and reasonable
6 steps to distribute Funds to persons who purchased shares of Discover Capital
7 through either the offering described in the private placement memorandum dated
8 September 2002, or from the over-the-counter ("OTC") securities market between
9 September 23, 2002 through July 31, 2003 ("Relevant Purchase Period").
10

11 B. The Distribution Agent shall, with the assistance of the Commission staff, review
12 a spreadsheet created by the Commission from business records provided to the
13 Commission during its investigation of this matter to identify potential Claimants
14 and the amounts invested. The Distribution Agent shall use best efforts to update
15 the contact information for those Claimants.
16

17 C. The Distribution Agent shall provide the potential Claimants identified in
18 paragraph "B" above with written notice by certified mail of the right to submit a
19 claim. The notice shall include a copy of the Court order approving this plan, a
20 proof of claim form prepared by the Distribution Agent, and the deadline for
21 filing of claims.
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23 D. In addition, the Distribution Agent, in coordination with the attorneys for the
24 Commission, shall publish notice to potential Claimants through the
25 Commission's website at www.sec.gov. As part of this notice, access to a copy of
26 the Court order approving this plan, a proof of claim form prepared by the
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1 Distribution Agent, and the deadline for filing of claims shall be provided through
2 the SEC website. Analysis of the investor trading data obtained from the
3 Commission staff and the public notice campaign on the Commission website
4 shall constitute reasonable efforts by the Distribution Agent to identify potential
5 Claimants and notify them of the Discover Capital Distribution Account.

6 E. Each Claimant must submit a proof of claim form prepared by the Distribution
7 Agent, and each Claimant must certify the existence and amount of any such
8 claim under penalty of perjury. A claim shall be based upon the total dollar
9 amount invested during the Relevant Purchase Period (through the private
10 placement, individual shares, or both). Where a Claimant has both bought and
11 sold shares during the Relevant Purchase Period, or received a partial or complete
12 refund for his or her investment, his or her claim shall be reduced by the amount
13 recovered through the sale or refund. This net amount (investment less recovery)
14 shall constitute the total amount invested for the purposes of figuring each
15 Claimant's pro rata share as described in paragraph F below. All claims must be
16 in writing and post-marked within ninety (90) days from the later of the date of
17 mailing by certified mail or publication of notice on the Commission's website.
18 The publication on the Commission website will include a bar date by which a
19 proof of claim must be received. No claim shall be accepted after such date. The
20 Distribution Agent may require documentary evidence supporting a claim where
21 the existence or amount of said claim is inconsistent with the Commission's
22 records. The Distribution Agent shall not make distributions to any Claimant
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1 affiliated with the Defendants/Respondents as a principal, officer, director,
2 employee, sales agent, or independent contractor.

3 F. Once the Claimants' eligibility for participation in the Discover Capital Custodial
4 Account has been verified, the Distribution Agent shall determine each Claimant's
5 pro rata share of the amount of Funds available for distribution by calculating
6 each Claimant's total amount invested in Discover Capital holdings through the
7 offering described in the private placement memorandum or purchases from the
8 OTC securities market during the Relevant Purchase Period as a percentage of the
9 total financial loss of all eligible Claimants. A Claimant's pro rata share may not
10 exceed the Claimant's total investment.

11
12 G. The Distribution Agent shall notify all Claimants as to their pro rata share of the
13 Discover Capital Custodial Account. If the existence or amount of any claim
14 received by the Distribution Agent differs from records of the Distribution Agent
15 or the Commission, the Distribution Agent shall request that the Claimant supply
16 the Distribution Agent with records sufficient to substantiate such claim.

17
18 H. Where the Distribution Agent denies a claim, in whole or in part, the Distribution
19 Agent shall so notify the Claimant in writing and shall advise the Claimant that he
20 or she has fifteen (15) days to request reconsideration and provide additional
21 documentation for the claim. The failure to submit to the Distribution Agent a
22 timely claim or satisfactory proof of a claim shall constitute sufficient grounds
23 upon which the Distribution Agent may deny a claim. The Distribution Agent
24 shall adjudicate the request for reconsideration within fifteen (15) days of receipt
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1 of the request for reconsideration, and shall notify the Claimant of the final
2 decision in writing within five (5) days of any decision.

3 I. Except as otherwise provided herein, the filing of a proof of claim with the
4 Distribution Agent shall constitute consent and grant by the Claimant of
5 jurisdiction to this Court's supervision of the distribution of the Discover Capital
6 Custodial Account.

7
8 J. The procedure for appealing a denial of a claim with the Court shall be as follows:

9 (i) A Claimant may only appeal the denial of a claim after requesting, and
10 being denied, reconsideration from the Distribution Agent.

11 (ii) Any appeal by Claimant to the Distribution Agent's denial shall be filed
12 and served by the Claimant on the Court within thirty (30) days of a final
13 decision by the Distribution Agent, with copies served upon the
14 Distribution Agent and counsel for the Commission. The Claimant's
15 filing shall include a copy of all decisions by the Distribution Agent, any
16 evidence to be presented by the Claimant, and shall be submitted by
17 written declaration under penalty of perjury as to the accuracy, veracity
18 and authenticity of such evidence. Any reply by the Distribution Agent
19 and/or the Commission shall be in accordance with applicable Federal and
20 local rules of procedure.

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23 (iii) All of the claims and distribution issues shall be heard and adjudicated by
24 the Court without a jury.
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- 1 K. The Distribution Agent shall set aside a portion of the Discover Capital Custodial
2 Account to pay taxes on its income and the fees and expenses incurred or likely to
3 be incurred in carrying out the plan ("Reserves").
- 4 L. The Distribution Agent shall then allocate the balance of the Discover Capital
5 Custodial Account, minus Reserves, among eligible Claimants pro rata, based on
6 the amounts of their claims as allowed by the Distribution Agent.
- 7 M. The Distribution Agent shall, prior to paying any claims, file an application with
8 the Court seeking express approval of her proposed payment plan.
- 9 N. Upon Court approval, the Distribution Agent shall pay all outstanding taxes
10 payable by the Discover Capital Custodial Account, pay all remaining fees and
11 expenses incurred in carrying out the plan, and distribute the Discover Capital
12 Custodial Account according to the allocations provided for above. The
13 Distribution Agent shall include with payment all appropriate tax withholding or
14 other reports together with each Claimant payment.
- 15 O. Claimants shall be notified that checks will become void after six months.
16 Further, the Distribution Agent shall take reasonable steps to obtain correct
17 address information for any checks returned because of an invalid address and,
18 after taking such steps, shall either reissue new checks to the Claimant's current
19 address, or shall notify the Court of all steps taken to attempt to obtain a current
20 address.
- 21 P. If the Distribution Agent has a surplus after 1) making all distributions to
22 Claimants and paying taxes, fees and expenses, 2) receiving any tax refunds, and
23 3) accounting for any money remaining unclaimed by virtue of circumstances
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1 identified in paragraph O above, the Distribution Agent shall pay the balance
2 remaining in the Discover Capital Custodial Account to the United States
3 Treasury. Notwithstanding the above, if the surplus exceeds \$10,000, the
4 Distribution Agent may, after consultation with the staff of the Commission,
5 distribute this surplus on a pro rata basis to the previously identified Claimants
6 (excluding those Claimants whose distribution remains unclaimed by virtue of
7 circumstances described in paragraph O).
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9
10 **ORDERED** that the Plan may be Modified in the Following Manner:

- 11 A. When the Distribution Agent deems necessary, after consultation with the SEC
12 and on motion to the Court, the Distribution Agent may modify these procedures
13 to effectuate the general purposes of this Order.
14
15 B. The SEC may seek to modify this Order on motion to the Court with five (5) days
16 notice to the Distribution Agent.
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18 **ORDERED** that the Distribution Agent and her designees, agents and assistants shall be excused
19 from any requirement to post a bond or other undertaking, and shall not be liable to any person
20 for his/her or their actions hereunder, except upon a finding of misfeasance, gross negligence or
21 reckless disregard of duty
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24 Dated: 10 July, 2006
25 Washington, D.C.
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ROSEMARY M. COLLYER
United States District Judge

Copy to:

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