

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE COMMISSION, 100 F Street, N.E., Washington, D.C. 20549	:	
	:	
Plaintiff,	:	Civil Action No. 1:10-cv-01245
v.	:	(RJL)
	:	
DELL INC., MICHAEL S. DELL, KEVIN B. ROLLINS, JAMES M. SCHNEIDER, LESLIE L. JACKSON, NICHOLAS A. R. DUNNING	:	
	:	
Defendants.	:	

DISTRIBUTION PLAN FOR DELL SEC FAIR FUND

ARTICLE I

DEFINITIONS

This Distribution Plan sets forth the method and procedures for distributing the Dell SEC Fair Fund in the above-captioned action. Pursuant to the Final Judgments entered on October 13, 2010 against each of the Dell defendants and the Order for the Establishment of a Fair Fund and Appointment of Distribution Agent entered by the Court on November 15, 2011, the monies paid in this action are to be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

As used in this Distribution Plan, the following definitions shall apply:

1.1. “Affiliate” shall have the meaning set forth in section 101(2) of Title 11 of the United States Code, 11 U.S.C. § 101(2).

1.2. “Approved Claim” shall mean the final amount of an Eligible Claimant’s asserted claim that is ultimately approved for payment pursuant to this Distribution Plan.

1.3. “Available Distribution” shall mean the Dell SEC Fair Fund, plus interest, less costs, fees, tax payments, and other expenses paid or reimbursed pursuant to orders of the Court.

1.4. “Claims Bar Date” shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be postmarked by or received by the Distribution Agent to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the Dell SEC Fair Fund. The Claims Bar Date shall be one hundred and twenty (120) days after the Distribution Agent’s initial mailing of Claims Packets to Potentially Eligible Claimants as set forth in Section 3.15 below. Claims postmarked or received after the Claims Bar Date will not be reviewed and evaluated.

1.5. “Claim Deficiency Notice” means the notice sent by the Distribution Agent to a Potentially Eligible Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and provide the opportunity to cure any such deficiencies. A Claim Deficiency Notice shall be provided no later than sixty (60) days after the Claims Bar Date.

1.6. “Claims Determination Date” shall mean the date on or before which the Distribution Agent is to reach its determination concerning the validity and amount of each Potentially Eligible Claimant’s claim. Except as otherwise provided herein, the Claims Determination Date shall be no later than one hundred and fifty (150) days following the Claims Bar Date.

1.7. “Claims Packet” shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Distribution Agent or to those people who request such materials. The Distribution Agent, in consultation with the staff of the Commission, shall prepare the Claims Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and a Proof of Claim Form.

1.8. “Class Action” shall mean that certain class action litigation, styled *In re Dell Inc., Securities Litigation*, Case No. A-06-CA-00726-SS, filed in the United States District Court for the Western District of Texas. The Court in that litigation approved a settlement creating a \$40 million settlement fund, the net proceeds of which are to be distributed on a *pro rata* basis to authorized claimants who purchased or otherwise acquired the common stock of Dell Inc., directly or beneficially between May 16, 2002 and September 8, 2006, inclusive. The Garden City Group, Inc., the Distribution Agent for this Distribution Plan, also serves as the claims administrator of the Class Action settlement fund.

1.9. “Class Action Authorized Claimant” shall mean a Potentially Eligible Claimant whose claim was authorized by the Claims Administrator for payment in the Class Action. A Class Action Authorized Claimant is deemed an Eligible Claimant under this Distribution Plan with respect only to those Dell Common Stock transactions during the Recovery Period for which a claim was previously authorized in the Class Action. A Class Action Authorized Claimant is not automatically deemed an Eligible Claimant in this Distribution Plan with respect to Dell Common Stock transactions for which a claim was denied in whole or in part by the claims administrator in the Class Action for any reason or for which no claim was submitted to the claims administrator in the Class Action.

1.10. “Complaint” shall mean the Complaint filed by the Commission against the Dell Defendants.

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

1.12. “Days” shall mean calendar days.

1.13. “Dell” shall mean Dell Inc.

1.14. “Dell CRIS Account” shall refer to the funds deposited and to be deposited in an interest bearing account with the Court Registry Investment System (“CRIS”) pursuant to the Final

Judgments and certain other orders of the Court,¹ which account is identified by the above-captioned case name and number.

1.15. “Dell Common Stock” shall mean shares of common stock issued by Dell Inc.

1.16. “Dell Defendants” shall mean Dell Inc., Michael S. Dell, Kevin B. Rollins, James M. Schneider, Leslie L. Jackson, and Nicolas A.R. Dunning, each of whom was named as a defendant in the Complaint.

1.17. “Dell SEC Fair Fund” shall refer to the fund established pursuant to the provisions of the Sarbanes-Oxley Act of 2002 and pursuant to each of the Final Judgments and certain other orders of the Court, the corpus of which consists of the funds in the Dell CRIS Account, together with any funds added to that account prior to the distribution of the Dell SEC Fair Fund, and any accumulated interest, appreciation, and earnings thereon, less costs, fees, any post-judgment interest collected pursuant to 28 U.S.C. §1961,² tax payments and other expenses paid or reimbursed pursuant to orders of the Court.

1.18. “Dell Final Judgment” shall refer to that certain final judgment entered against Dell by the Court on or about October 13, 2010 to which Dell consented without admitting or denying the allegations in the Complaint and pursuant to which, among other things, the Court ordered Dell to disgorge \$1 and to pay a civil penalty of \$100,000,000 to the Clerk of the Court.

¹ Pursuant to the Order to Transfer Funds and to Appoint a Tax Administrator, dated December 28, 2010 [Dkt. No. 21] and entered in the above-captioned case, the Clerk of the Court and/or Financial Deputy was directed to transfer any funds presently held in the CRIS account under the cases captioned *SEC v. Robert W. Davis*, Case No. 1:10-cv-01464 and *SEC v. Randall D. Imhoff*, Case No. 1:10-cv-01465 and any future monies paid or collected in those civil actions to the Dell CRIS Account.

As background, on August 27, 2010, the Commission filed cases against two former Dell officers, Robert W. Davis and Randall D. Imhoff, alleging violations related to the accounting misconduct that was asserted in the Commission’s action against Dell. Without admitting or denying the Commission’s allegations, Messrs. Davis and Imhoff consented to Final Judgments entered by the United States District Court for the District of Columbia, in their respective cases. The Final Judgments ordered Mr. Davis and Mr. Imhoff to pay a penalty, disgorgement and prejudgment interest of \$203,158.00 and \$44,049.00, respectively, to the Clerk of the Court. On October 27, 2010, Mr. Davis deposited \$203,158.00 with the Clerk of the Court. Mr. Imhoff completed payment of his penalty, disgorgement and prejudgment interest to the Clerk of the Court on October 14, 2011.

² Under the miscellaneous receipts statute, 31 U.S.C. § 3302(b), post-judgment interest collected will be deposited into the general fund of the U.S. Treasury.

1.19. “Determination Notice” shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant who files a new claim or modifies a previously filed claim and which states the Distribution Agent’s determination of the validity of the Potentially Eligible Claimant’s claim. The Distribution Agent will not send Determination Notices to Class Action Authorized Claimants, unless they modify their previously authorized claim.

1.20. “Distribution Agent” shall mean The Garden City Group, Inc., the Distribution Agent recommended by the Commission, and approved by the Court, to assist with the administration and distribution of the Dell SEC Fair Fund.

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

1.22. “Distribution Plan Notice” shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the Dell SEC Fair Fund and their obligation to file a Proof of Claim Form in order to participate. The Distribution Agent, in consultation with the staff of the Commission, shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan, and such notice shall include, at a minimum, a statement that the Dell SEC Fair Fund relates to purchases of Dell Common Stock during the Recovery Period, the means of obtaining Claim Packets, instructions for submitting Proofs of Claim, including instructions for updating those claims authorized by the Claims Administrator in the Class Action via the Distribution Agent’s online claims filing system, and the Claims Bar Date. The Distribution Plan Notice shall advise Potentially Eligible Claimants that by participating in the distribution of the Dell SEC Fair Fund, they will not be releasing any rights or claims they may have against any party, including, but not limited to, Dell or Dell’s past and present directors, officers, advisers, and agents (other than with respect to the Distribution Agent).

1.23. “Eligible Claimant” shall mean a Potentially Eligible Claimant filing a Proof of Claim with the Distribution Agent on or before the Claims Bar Date who is finally determined by the Distribution Agent to be eligible for a distribution from the Dell SEC Fair Fund as provided herein because he or she purchased and held Dell Common Stock during the Recovery Period and suffered a loss as defined herein. An Eligible Claimant shall also mean a Class Action Authorized Claimant. An Eligible Claimant shall not include:

(a) Any director or officer, or former director or officer, of Dell or any of its past or present Affiliates who served in such capacity during the Recovery Period (or any of his or her assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities);

(b) Any employee of Dell or of any of its past or present Affiliates who has been terminated for cause in connection with the violations alleged in the Commission’s Complaint in this action or any related Commission action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Commission’s Complaint in this action or any related Commission action (or any of such employee’s Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities);

(c) Any defendant in any action brought by the Commission or any class action lawsuit related to the conduct described in the Commission’s Complaint in this action or any related Commission action (or any of such defendant’s Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities), unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Proof of Claim Form;

(d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in the Commission’s Complaint in this action or any

related Commission action (or any of his or her Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities);

(e) Any Person who assigned their right to obtain a recovery in the Commission's action against Dell;

(f) Any assignee of another Person's right to obtain a recovery in the Commission's action against Dell, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by inheritance or devise; or

(g) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent and the Independent Outside Accounting Firm and its employees.

1.24. "Eligible Loss Amount" shall mean the amount of loss an Eligible Claimant has incurred through the purchase of Dell Common Stock during the Recovery Period, as determined under the Plan of Allocation (attached hereto as Exhibit A).

1.25. "Final Judgments" shall refer collectively to the Dell Final Judgment and the Individual Defendant Final Judgments, each of which was entered against the respective Dell Defendant by the Court on or about October 13, 2010 to which each of the Dell Defendants consented without admitting or denying the allegations in the Complaint and pursuant to which certain of the Dell Defendants disgorged funds and paid, or are scheduled to pay funds to the Clerk of the Court in the aggregate amount of \$111,418,947, plus accrued interest.

1.26. "Individual Defendant Judgments" shall refer to the following final judgments entered by the Court on or about October 13, 2010, including: (i) the final judgment against Michael S. Dell to which Mr. Dell consented without admitting or denying the allegations in the Complaint and pursuant to which, among other things, the Court ordered Mr. Dell to disgorge \$1 and to pay a civil penalty in the amount of \$4,000,000 to the Clerk of the Court; (ii) the final judgment

against Kevin B. Rollins to which Mr. Rollins consented without admitting or denying the allegations in the Complaint and pursuant to which, among other things, the Court ordered Mr. Rollins to disgorge \$1 and to pay a civil penalty in the amount of \$4,000,000 to the Clerk of the Court; (iii) the final judgment against James M. Schneider to which Mr. Schneider consented without admitting or denying the allegations in the Complaint and pursuant to which, among other things, the Court ordered Mr. Schneider to disgorge \$83,096, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$38,640, and to pay a civil penalty in the amount of \$3,000,000 to the Clerk of the Court; (iv) the final judgment against Leslie L. Jackson to which Ms. Jackson consented without admitting or denying the allegations in the Complaint; and (v) the final judgment against Nicolas A.R. Dunning to which Mr. Dunning consented without admitting or denying the allegations in the Complaint and pursuant to which, among other things, the Court ordered Mr. Dunning to disgorge \$1 and to pay a civil penalty in the amount of \$50,000 to the Clerk of the Court. All Individual Defendants paid as ordered, except for Mr. Schneider, who paid \$200,000 on October 27, 2011 and owes the remaining balance of approximately \$1,921,449.

1.27. “Minimum Distribution Amount” for purposes of this Distribution Plan, after pro-rated payments are calculated, a distribution to be made to an Eligible Claimant must equal or exceed \$25.00.

1.28. “Person” shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company, or governmental entity. All nouns, pronouns, and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.

1.29. “Plan of Allocation,” for purposes of this Distribution Plan, shall be the methodology set forth in Exhibit A and attached hereto.

1.30. “Potentially Eligible Claimant” shall mean a Person identified by the Distribution Agent as having a possible claim to the Dell SEC Fair Fund under this Distribution Plan, or a Person asserting that he or she has a possible claim to the Dell SEC Fair Fund under this Distribution Plan.

1.31. “Proof of Claim Form” shall mean the form designed by the Distribution Agent in accordance with this Distribution Plan for the filing of proof of a Potentially Eligible Claimant’s claim. The form shall require, at a minimum, that a Potentially Eligible Claimant submit sufficient documentation reflecting the Potentially Eligible Claimant’s purchases and dispositions of Dell Common Stock during the Recovery Period and the Tax Identification Number of the Potentially Eligible Claimant.

1.32. “Recognized Loss (or Gain) Per Share” shall mean the amount of loss or gain per share, as calculated pursuant to the Plan of Allocation.

1.33. “Recovery Period,” for purposes of this Distribution Plan, shall mean the period of time commencing on May 3, 2001 and continuing through the close of trading on September 8, 2006.

1.34. “Summary Notice” shall mean the notice published in national publications pursuant to Section 3.15 below. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement that the Dell SEC Fair Fund relates to purchases of Dell Common Stock during the Recovery Period and the means of obtaining a Claims Packet.

1.35. “Tax Administrator” shall mean Damasco & Associates, LLP, the firm appointed by the Court on December 28, 2010.

ARTICLE II

ALLOCATION AMONG ELIGIBLE CLAIMANTS

2.1 The Available Distribution shall be allocated among Eligible Claimants who filed approved Claims as provided under the terms of this Distribution Plan.

2.2 An Eligible Claimant's Eligible Loss Amount shall be used as the basis for calculating, pursuant to the Plan of Allocation, the amount of the Approved Claim. As described in the Plan of Allocation generally, the Eligible Loss Amount is determined by aggregating the Recognized Loss (or Gain) Per Share of all shares purchased during the Recovery Period. As set forth in Section 3.5 below, the Distribution Agent may, but is not required to, aggregate an Eligible Claimant's accounts for purposes of determining the Eligible Loss Amount.

ARTICLE III

ADMINISTRATION OF THE CLAIMS PROCEDURE

A. General Administrative Provisions

3.1 The Distribution Agent shall oversee the administration of the claims, procedures, and distribution as provided in this Distribution Plan. The Distribution Agent shall review the claim of each Potentially Eligible Claimant and make a determination under the criteria established herein as to the eligibility of each Potentially Eligible Claimant to recover monies and the amount of money to be distributed from the Dell SEC Fair Fund to each Eligible Claimant in accordance with the provisions of this Distribution Plan.

3.2 Any claim asserted by a Potentially Eligible Claimant (except as provided in Section 3.4 below) shall be in writing³ and shall provide adequate documentary evidence to substantiate the

³ Claims with 100 or more transactions or on behalf of 20 or more different accounts must be submitted electronically and in the format specified by the Distribution Agent. The mandatory electronic filing requirements will be available on the Dell SEC Fair Fund website. Files that do not comply with the required electronic filing format may be rejected.

claim, including all documentary evidence which the Distribution Agent deems necessary or appropriate, including, but not limited to, available account statements and trade confirmations.

3.3 All claims (except as provided in Section 3.4 below) must be verified on the basis of a sworn Proof of Claim Form, affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States.

3.4 A Class Action Authorized Claimant is not required to submit the written claim described in Section 3.2 or the verification described in Section 3.3 with respect only to those Dell Common Stock transactions for which a claim was previously authorized by the Claims Administrator in the Class Action. A Class Action Authorized Claimant who makes a claim regarding Dell Common Stock transactions for which a claim was denied in whole or in part by the claims administrator in the Class Action for any reason, or for which no claim was submitted to the claims administrator in the Class Action, is required to comply with the requirements set forth in Sections 3.2 and 3.3 with respect to such claim. In addition, if a Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary, a custodian, trustee, or professional investing on behalf of such fund or entity is required to comply with the certification requirement set forth in Section 3.9 below with respect to all claims on behalf of the fund or entity, including those relating to transactions for which a claim was previously authorized in the Class Action.

3.5 In determining the Eligible Loss Amount for an Eligible Claimant, the Distribution Agent may aggregate the accounts held by an Eligible Claimant in accordance with the following aggregation rules:

(a) Each Person who is a Potentially Eligible Claimant and would like to aggregate accounts shall so designate in the Proof of Claim Form, *provided* that a Person may only aggregate accounts as follows:

(i) with respect to an individual Person, such Person may aggregate such Person's account, such Person's parent's, child's, or spouse's (collectively "family") accounts, such Person's or such Person's family retirement accounts, and accounts owned by a corporation or partnership in which such Person or such Person's family is a majority owner or which is controlled by such Person or such Person's family; and

(ii) with respect to a Person that is a corporation or partnership, such Person's accounts and such Person's Affiliates' accounts.

(b) The Distribution Agent in its exclusive discretion may, for purposes of this Section 3.5, but shall not have any obligation to, aggregate accounts not designated for aggregation in a Proof of Claim Form.

(c) Notwithstanding the aggregation of individual accounts with retirement accounts (*e.g.* IRA accounts) for purposes of this Section 3.5, all payments shall respect the manner in which an account is nominated. For example, Jane Smith may aggregate her personal accounts with her IRA account to meet the Minimum Distribution Amount. However, the payment to Jane Smith will be made payable directly to her for her personal account(s) and payable to the trustee or custodian of her IRA for her IRA account.

3.6 The receipt of Dell Common Stock during the Recovery Period by gift, inheritance, devise, or operation of law shall not be deemed to be a purchase of Dell Common Stock during the Recovery Period, nor shall it be deemed an assignment of any claim relating to the purchase of such shares unless specifically provided in the instrument of gift or assignment. However, the recipient of Dell Common Stock as a gift or as a distribution from an estate shall be eligible to file a Proof of Claim Form and participate in the distribution of the Dell SEC Fair Fund to the extent the particular donor or decedent as the actual purchaser of Dell Common Stock would have been eligible based upon the circumstance of such purchase within the Recovery Period.

However, the donee and the donor may not both make a claim with regard to the same Dell Common Stock. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

3.7 To the extent that an Eligible Claimant, his or her representative, heir, or assign requests a distribution check to be issued or reissued in a different name than the Eligible Claimant (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), the Distribution Agent shall honor such request upon receipt of documentation which the Distribution Agent in its sole discretion deems appropriate to substantiate the request.

3.8 Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which does not include Individual Retirement Accounts, and such plan's participants are properly made by the custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of plan participants and the number of shares owned by each plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner that is consistent with its fiduciary duties and the account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potentially Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent prior to the Claims Bar Date.

3.9 Custodians, trustees, or professionals investing on behalf of more than one Potentially Eligible Claimant in a pooled investment fund or entity will be required to complete a certification, which will require them at a minimum to attest that any distribution to the

custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management, even if the pooled investment fund or entity is a Class Action Authorized Claimant (as defined in Sections 1.9 and 3.4 above). The certification form will be available upon request from the Distribution Agent.

3.10 To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make adjustments or clarifications to the Distribution Plan that are consistent with the purposes of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission and approved by the Court. Non-material changes to the Distribution Plan may be implemented by the Distribution Agent after consultation with, and consent of, Commission staff.

3.11 The Distribution Agent will build a database for purposes of administering the Dell SEC Fair Fund, containing previously approved information of all Class Action Authorized Claimants as well as information received from Potentially Eligible Claimants in the Commission's actions. If a previously approved claim is amended by a Class Action Authorized Claimant, the Distribution Agent will update the Dell SEC Fair Fund database to reflect the Class Action Authorized Claimant's modified claim.

3.12 The Dell SEC Fair Fund will be distributed to investors who purchased Dell Common Stock during the Recovery Period (May 3, 2001 through September 8, 2006), a longer period of time than the period covered in the court-approved plan in the Class Action. The Class Action period ran from May 16, 2002 through September 8, 2006.

B. Identification of and Notice to Potentially Eligible Claimants

3.13 The Distribution Agent shall, insofar as is practicable, use its best efforts to identify Potentially Eligible Claimants from a review of trading records and any other commercially reasonable sources available to it, including the database maintained in the Class Action.

3.14 In order to ensure a timely and accurate mailing of Claims Packets to Potentially Eligible Claimants, the transfer agent for Dell shall deliver to the Distribution Agent the transfer files in its possession, custody, or control (i.e., all record holders of Dell Common Stock on the first and last day of the Recovery Period, plus all record transferees during the period) no later than five (5) business days from the date of the entry of the order by the Court approving this Distribution Plan.

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

(a) create a mailing and claims database, consisting of new records provided by Dell or its agent as well as the existing information of the Class Action Authorized Claimants;

(b) run a National Change of Address search to retrieve updated addresses for all records in the new database, thereby ensuring updated mailing information for Potentially Eligible Claimants;

(c) mail by United States First Class Mail a Claims Packet to each Potentially Eligible Claimant known to the Distribution Agent;

(d) include in the Claims Packet sent to each Class Action Authorized Claimant a cover letter stating that such Class Action Authorized Claimant is automatically deemed an Eligible Claimant with respect only to those Dell Common Stock transactions for which a claim was previously authorized in the Class Action. The cover letter will also provide such claimants with a website link and a personalized identification number for the claimant to view the

transactions that the Distribution Agent has on file for such claimant from the Class Action. Furthermore, the cover letter will notify each Class Action Authorized Claimant that if their only Dell Common Stock transactions consist of those transactions for which their claim was previously authorized for payment in the Class Action, they are not required to submit a written claim and need not do anything further to have their claim considered, except to the extent that such Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary and required to comply with the certification requirement set forth in Section 3.9 above. The letter also will notify each Class Action Authorized Claimant that if they did engage in additional Dell Common Stock transactions during the Recovery Period for which their claim was not previously authorized in the Class Action, and would like to make a claim regarding such transactions, the claimant must submit a written claim with respect to those transactions only, and comply with the certification requirement set forth in Section 3.9 to the extent applicable;

(e) establish a website constructed for the administration of the Dell SEC Fair Fund from which each Potentially Eligible Claimant may request a Claims Packet by mail or download a copy of the Claims Packet and other relevant documents online. In addition, Class Action Authorized Claimants shall have the ability to view their approved transactions from the Class Action on the website and have the ability to supplement their claim through an online filing system. The Distribution Agent will also establish a link to such a website from its own website, www.gardencitygroup.com/cases;

(f) provide a copy of the Distribution Plan and Distribution Plan Notice to the Commission and request that the Commission establish a link to the Dell SEC Fair Fund's website from <http://www.sec.gov>;

(g) establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the Dell SEC Fair Fund; and

(h) publish a copy of a Summary Notice, approved by the Commission, on a single occasion in the Investors Business Daily (as well as a release on the P.R. Newswire) within two weeks of the date of the mailing of Claims Packets to Potentially Eligible Claimants.

3.16 The Distribution Agent shall also give additional notice of the distribution process in such a manner as the Distribution Agent, in consultation with the Commission staff, deems appropriate, which may include direct notification to custodians, securities broker-dealers, and other potential nominee purchasers identified by the Distribution Agent. The Distribution Agent may limit such notice to the sub-period of the Recovery Period from trade dates May 4, 2001 through May 15, 2002, which preceded the Class Action class period.

3.17 The Distribution Agent shall promptly provide a Claims Packet to any Potentially Eligible Claimant who so requests electronically, in writing, or by telephone, as set forth in the Distribution Plan Notice.

3.18 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant (except for a Class Action Authorized Claimant with respect to those Dell Common Stock transactions for which a claim was previously authorized in the Class Action as set forth in Section 1.9 above) must submit to the Distribution Agent a properly completed Proof of Claim reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Claims Bar Date may be extended for one or more Potentially Eligible Claimants by the Distribution Agent in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Unless otherwise determined by the Distribution Agent in its sole discretion for good cause shown, any Potentially Eligible Claimant who does not file a properly completed and documented Proof of Claim, if so

required, including the Potentially Eligible Claimant's Tax Identification Number, so that such completed form and documentation are postmarked by (or received by the Distribution Agent if not sent by U.S. Mail) on or before the Claims Bar Date (*see* Section 1.4 above), shall be barred from asserting a claim against the Dell SEC Fair Fund or the Distribution Agent. The burden shall be upon the Potentially Eligible Claimant to ensure that his or her Proof of Claim has been properly and timely received by the Distribution Agent.

3.19 Each Potentially Eligible Claimant (except for a Class Action Authorized Claimant not required to submit a written claim) will be provided with a notification in the Claims Packet stating that a claim will not be deemed submitted unless the Potentially Eligible Claimant receives an "Acknowledgement Postcard" or an electronic acknowledgement from the Distribution Agent. The Acknowledgement Postcard or the electronic acknowledgement shall be the official acknowledgement that the Distribution Agent has received and will review the claim.

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

3.20 The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of his or her claim, and that he or she qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

3.21 The Distribution Agent shall provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim

is deficient. The Claim Deficiency Notice shall be provided to such affected claimants within sixty (60) days after the Claims Bar Date.

3.22 The Distribution Agent shall have the authority, in its sole discretion, on a case-by-case basis, to extend the Claims Bar Date and waive technical claim deficiencies and approve claims.

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

3.24 A Potentially Eligible Claimant who has failed to file an appropriate Proof of Claim in a timely manner, or who has failed to cure a deficiency identified in a Claim Deficiency Notice, is not permitted to object to the barring or denial of his or her claim on the basis that the Distribution Agent failed to mail, or properly to mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Distribution Plan Notice, Claims Packet, or the relevant Determination Notice, or that an initial Proof of Claim, or revised Proof of Claim to cure deficiencies, or the requisite supporting documentation, was improperly reflected as not having been received by, or properly recorded as received by, the Distribution Agent, or that a Potentially Eligible Claimant's name and/or proper contact information was not properly recorded in the Distribution Agent's records. The Potentially Eligible Claimant has the burden of notifying the Distribution Agent of his or her current address and other contact information, and confirming receipt of that information by the Distribution Agent.

3.25 On or before the Claims Determination Date, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a new or modified Proof of Claim with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim. In the event a claim is denied, in whole or in part, the Distribution Agent will state the reason for such denial. The Distribution Agent will not send

Determination Notices to Class Action Authorized Claimants, unless they modify their previously authorized claims.

3.26 All determinations made by the Distribution Agent in accordance with this Distribution Plan shall be final and not subject to appeal.

D. Payment of Approved Claims

3.27 The Distribution Agent shall distribute the Available Distribution to all Eligible Claimants who filed Approved Claims only after all timely submitted Proofs of Claim have been processed and all potentially Eligible Claimants whose claims have been rejected or disallowed, whether in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above and provided that the distribution amount to be made to an Eligible Claimant must equal or exceed the Minimum Distribution Amount.

3.28 Within forty-five (45) days following the Claims Determination Date, the Distribution Agent shall prepare a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Approved Claim of each Eligible Claimant (i.e., the Final Payee List). The Distribution Agent shall provide the Final Payee List to the Commission staff with a reasonable assurance letter as to the completeness and accuracy of the payment file. The Final Payee List shall, upon request, be made available to the Court. The distribution amount specified to the Court will have already taken into account reserves for taxes, as requested by the Tax Administrator and approved by the Commission staff, and reserves necessary for: (i) other fees that may be incurred in handling claims that require further review, late claims, other claims at the Distribution Agent's discretion; or (ii) reasonably anticipated expenses.

3.29 To facilitate distribution, the Distribution amount shall be transferred from the CRIS to the custody of the Distribution Agent as described below:

(a) Upon receipt of the monies from the CRIS, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account maintained at a major United States commercial bank (the “Bank”), to be proposed by the Distribution Agent subject to approval of the staff of the Commission. The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.

(b) Pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the staff of the Commission, the Distribution Agent and the Bank shall establish an escrow account together with a controlled distribution account or managed distribution account or linked checking and investment account in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund (“QSF”), as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: “SEC v. Dell Inc., EIN No. 61-1632078,” as custodian for the benefit of investors allocated a distribution from the Dell Distribution Plan in SEC v. Dell Inc., *et al.* (the “Dell SEC Fair Fund Escrow Account”).

(c) During the term of the Escrow Agreement, the Dell SEC Fair Fund Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, tax obligations, and fees of the Tax Administrator or invested or reinvested in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short-term United States Treasury securities and obligations; provided, however, that investments in the United States Treasury securities will not be made through repurchase agreements or other derivative products. The Distribution Agent shall provide duplicate original bank and/or investment

statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

3.30 If, after the Distribution Agent makes the distribution to Eligible Claimants, funds remain in the Dell SEC Fair Fund after payment of all outstanding taxes and fees, those funds shall be paid to the Commission for transfer to the United States Treasury.

3.31 All Dell SEC Fair Fund checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the Dell SEC Fair Fund. If the Eligible Claimant submits a valid, written request for reissue during the 90 days following the issuance of the check, such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after ninety (90) days post-distribution. The Distribution Agent shall use all reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service. However, the claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.

3.32 All distribution payments shall be preceded or accompanied by a communication that includes, as appropriate:

- (a) a statement characterizing the distribution;

(b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;

(c) a statement that checks will be void after ninety (90) days; and

(a) the name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Dell SEC Fair Fund distribution checks, on their face, or the accompanying mailing shall clearly indicate that the money is being distributed from an SEC Fair Fund established by the Commission to compensate investors for harm as a result of their investment in Dell Common Stock.

3.33 Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person if he makes a distribution in accordance with the list of all Eligible Claimants and their Approved Claims as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Dell SEC Fair Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Dell SEC Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

3.34 The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent), including, but not limited to, Dell and Dell's past or present directors, officers, employees, advisers, and agents.

ARTICLE IV

POST-DISTRIBUTION

4.1. The Distribution Agent shall reissue checks to Eligible Claimants, upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after ninety (90) days post-distribution.

4.2. The Distribution Agent will perform advanced address searches for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within ninety (90) days post-distribution.

4.3. One hundred and twenty (120) days following the distribution, all approved final fees and expenses shall be paid, all outstanding checks shall be voided, and any remaining funds shall be paid to the Commission for transfer to the United States Treasury upon receipt of written instructions by the Distribution Agent.

ARTICLE V

WRAP-UP AND WIND DOWN OF DISTRIBUTION

5.1 The Distribution Agent will destroy all documents, including documents in any media, six (6) years after the transfer of any remaining funds to the Commission. In addition, the Distribution Agent will shut down the toll-free number and website established specifically for the administration of the Dell SEC Fair Fund upon the transfer of any remaining funds to the Commission.

5.2 Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever and, in order to allow the full and final distribution of the Dell SEC Fair Fund, no further claims shall be made against the Dell SEC Fair Fund beyond the amount allocated to Eligible Claimants. Accordingly, this Plan of Distribution, as approved by the Court, bars any

further claims against the Dell SEC Fair Fund beyond the amount allocated to Eligible Claimants.

5.3 Upon final distribution of the funds, the Distribution Agent shall make arrangement for the final payment of taxes and tax-related fees and shall submit a final accounting to the Court in an SEC standard accounting format provided by the staff of the Commission. The Dell SEC Fair Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, 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 or any residual have been paid to the Commission for transfer to the United States Treasury.

ARTICLE VI

RESPONSIBILITIES OF THE TAX ADMINISTRATOR

6.1 The Dell SEC Fair Fund is a Qualified Settlement Fund within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) obtaining a taxpayer identification number;
- (b) timely requests for funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) fulfilling any information reporting or withholding requirements required for distributions from the Dell SEC Fair Fund.

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

ARTICLE VII

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

7.1 Pursuant to the Consent and Undertakings of Defendant Dell Inc. filed in the above-captioned case, *see* Dkt. No. 2, the Distribution Agent's reasonable fees and costs associated with distributing the Dell SEC Fair Fund, which were previously negotiated between The Garden City Group, Inc. and the staff of the Commission, shall be paid by Dell. Similarly, pursuant to the Order for Establishment of a Fair Fund and Appointment of Distribution Agent (Dkt. No. 36), all taxes and reasonable Tax Administrator fees shall be paid by Dell.

7.2 The Distribution Agent shall provide to Commission staff and file with the Court a progress report and a quarterly account statement in a format to be provided by the Commission staff, within forty-five (45) days of the entry of this Distribution Plan, and shall provide to Commission staff and file additional reports and quarterly account statements within twenty (20) days after the end of every quarter thereafter. The Distribution Agent shall also provide to Commission staff and file a final report and final account statement in a format to be provided by Commission staff, when its duties are completed. The Distribution Agent shall serve a copy of all such reports on counsel for Dell. Such progress reports shall inform the Court and the staff of the Commission of the activities and status of the Dell SEC Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Dell SEC Fair Fund, including, among other things, an interim accounting of all monies in the Dell SEC Fair Fund as of the most recent month-end, including all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, the value of those accounts, all monies earned or received into these accounts, funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Dell SEC Fair Fund to satisfy any fees, costs, taxes, and other expenses incurred in the implementation of this

Distribution Plan. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan. The Clerk of the Court shall provide the Distribution Agent with any account information relating to funds held in the Dell CRIS Account under the case name designation SEC v. Dell Inc., et al., Civil Action No. 1:10-cv-01245, that may be required for the quarterly and final reports, including providing copies of any account statements that the Distribution Agent may request.

ARTICLE VIII

OTHER RIGHTS AND POWERS

8.1 The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by him in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

8.2 The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Dell SEC Fair Fund, provided that such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

8.3 All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

8.4 The Court reserves the right to amend this Distribution Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Distribution Plan.

SO ORDERED:

Dated: _____

UNITED STATES DISTRICT JUDGE