

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

v.

THOMAS GITY, SR. , et al.

**Defendant and
Relief Defendants.**

Case No. 2:20-CV-14342-AMC-SM

Hon. Aileen M. Cannon

**NOTICE BY THE SECURITIES AND
EXCHANGE COMMISSION OF NO
OBJECTION PURSUANT TO
SECTION III OF ECF NO. 127,
ORDER TO SHOW CAUSE**

Pursuant to Section III of the Order to Show Cause entered by this Court (ECF No. 127), Plaintiff Securities and Exchange Commission (“SEC”) hereby notifies the Court that, as of the day of this filing, it has received no objections to the proposed distribution plan (the “Plan”, filed at ECF No. 126-3 and attached hereto). The SEC further confirms that the Plan and the Order to Show Cause have been published in accordance with Section I of that Order. Accordingly, the SEC respectfully requests that the Court enter the accompanying proposed Order approving the Plan.

Dated: August 24, 2022

Respectfully submitted,

/s/Catherine E. Pappas

Catherine E. Pappas (PA Bar 56544)

pappasc@sec.gov

U.S. Securities and Exchange Commission

1617 JFK Blvd., Suite 520

Philadelphia, PA 19103

(215) 597-0657

**Attorney for Plaintiff United States
Securities and Exchange Commission**

Exhibit 1: Proposed distribution plan

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that I caused a true and correct copy of the document was served on the following via method indicated:

Via Email

Tom Gity, Sr.

Coachri@aol.com

/s/Catherine E. Pappas

Catherine E. Pappas

Exhibit 1
(Proposed Plan of Distribution)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

v.

THOMAS GITY, SR. ,

Defendant, and

THOMAS GITY, JR., et al.,

Relief Defendants.

Case No. 2:20-CV-14342-AMC-SM

Hon. Aileen M. Cannon

(Proposed) Distribution Plan

I. OVERVIEW

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC”) to fairly and reasonably distribute the Distribution Fund in this matter (the “Distribution Fund”), currently comprised of disgorgement collected from the Thomas Gity, Sr. (the “Defendant”), and Thomas Gity, Jr. and Treasury Coast Property Enterprises, LLC (collectively, the “Relief Defendants”), in this proceeding.

2. As further described below, the Plan seeks to compensate investors who were harmed by the Defendant’s misconduct alleged in the Complaint. As calculated using the rising tide methodology detailed in the Plan of Allocation attached as Exhibit A, investors will be compensated for their losses on their investment(s) with the Defendant between January 1, 2018 and January 30, 2019, inclusive (the “Relevant Period”).

3. Based on information obtained by the SEC during and after its investigation and its review and analysis of applicable records, the SEC believes that it has all records necessary to calculate each investor’s harm. As a result, the Distribution Fund is not being distributed according to a claims-made process.

4. The SEC has custody of the Distribution Fund and shall retain control of the assets of the Distribution Fund. The Court retains jurisdiction over the implementation of the Plan.

II. BACKGROUND

5. On September 29, 2020, the SEC filed a complaint (the “Complaint”) against the Defendant and the Relief Defendants. The Complaint alleged that, from at least January 2018 through January 2019, the Defendant violated federal securities laws by misrepresenting to investors, among other things, that he managed digital assets worth in excess of \$100 million and achieved weekly returns as high as 46.83% with no market risk. The SEC alleged that, in reality, of the \$6.8 million that the Defendant received from investors, he deposited less than \$970,000 in digital asset trading accounts and did not achieve the profits he claimed to generate. Rather, the Defendant transferred investor funds from the digital asset trading accounts that he controlled to his own personal bank account and accounts of the Relief Defendants, and used the remainder of investor funds for personal expenses or to pay other investors in a Ponzi-like fashion. ECF No. 1.

6. The matter has since been resolved. By Orders entered June 21, 2021 and September 23, 2021, the Court granted final judgment by consent against the Defendant, in relevant part finding him liable for disgorgement of \$4,676,716, prejudgment interest of \$241,647.52, and a civil penalty in the amount of \$192,768, for a total amount of \$5,111,131.52. ECF Nos. 51, 90. The Court further ordered the Defendant to disgorge certain real property located at 1250 SE Coral Reef Street, Port St. Lucie, Florida (the “Property”). ECF No. 51.

7. By Order entered July 9, 2021, the Court appointed a liquidating agent (the “Liquidating Agent”) to sell the Property. ECF No. 58. The Liquidating Agent sold the Property and pursuant to Court Order entered May 23, 2022, the Liquidating Agent remitted \$465,925.74 to the SEC. ECF No. 124.

8. By Order entered on April 12, 2022, the Court entered final judgment by consent against the Relief Defendants, finding the Relief Defendants jointly and severally liable to disgorge \$1,321,762.01 (the “April 12 Order”). ECF No. 118. The Relief Defendants have since paid this obligation in full. *See* ECF No. 119. In the April 12 Order, the Court directed any payment under a Court-approved distribution plan to any of four specified entities to be directed to “True North,” an entity established by those entities.

9. By Order entered May 18, 2022, the Court appointed Miller Kaplan Arase LLP (“Miller Kaplan”) as Tax Administrator for the Distribution Fund. ECF No. 123 (the “Appointment Order”).

10. The Distribution Fund currently holds approximately \$1.79 million and has been deposited in an interest-bearing account at the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”). Accrued interest, additional collections, and any assets directed to the Distribution Fund by Court or Commission order or otherwise, shall be added to the Distribution Fund.

III. DEFINITIONS

As used in this Plan, the following definitions will apply:

11. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

12. **“April 12 Order”** means this Court’s Order entered April 12, 2022, ECF No. 118, which among other things directs, by agreement of interested parties, certain Distribution Payments to a specific entity formed by the underlying investors.

13. **“Distribution Fund”** is comprised of collections on the final judgments entered in the captioned litigation. Accrued interest, additional collections, and any assets directed to the Distribution Fund by Court or Commission order or otherwise, shall be added to the Distribution Fund.

14. **“Distribution Payment”** means a payment from the Distribution Fund to a Payee in accordance with the terms of this Plan.

15. **“Eligible Claimant”** means a Preliminary Claimant who is determined to have suffered a Recognized Loss pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

16. **“Excluded Party”** shall mean: (a) the Defendant and Relief Defendants, and their legal representatives, nominees, assigns, heirs, distributees, spouses, parents, children, successors-in-interest, or controlled entities; and (b) except as provided in the April 12 Order, any purchaser or assignee of another Person’s right to obtain a recovery from the Distribution Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, or devise.

17. **“Final Determination Notice”** means the written notice sent by the Distribution Agent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Investment and Recovery notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, if required, as described in paragraph 36, except for those whose Plan Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

18. **“Investment”** shall mean the Preliminary Claimant’s aggregate out-of-pocket investment with the Defendant during the Relevant Period, exclusive of any interest, dividend, or paper profit.

19. **“Net Available Distribution Fund”** means the Distribution Fund less Administrative Costs.

20. **“Payee”** means an Eligible Claimant who is determined under the Plan of Allocation to receive a Distribution Payment. Distribution Payments directed to Payees that are the subject of the April 12 Order shall be directed in accordance with the April 12 Order.

21. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

22. **“Plan Notice”** means a written notice from the Distribution Agent to each Preliminary Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the SEC’s website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its calculated Investment and Recovery and instructions on how to dispute the same; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

23. **“Plan of Allocation”** means the methodology used by the Distribution Agent to determine if a Preliminary Claimant is a Payee. The Plan of Allocation is attached as Exhibit A.

24. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Distribution Agent based on her review and analysis of applicable records obtained by the SEC during and after its investigation, who may have suffered a loss from their investment with the Defendant during the Relevant Period.

25. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan of Allocation.

26. **“Recovery”** shall mean the aggregate amount of the Investment recovered by the Preliminary Claimant, whether through redemptions, periodic withdrawals, interest or dividend payments, distribution(s), settlements, or otherwise.

27. **“Relevant Period”** is between January 1, 2018 and January 30, 2019, inclusive.

28. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant who the Distribution Agent has been unable to locate, whose address the Distribution Agent has not been able to verify, and/or who does not timely respond, as appropriate, to the Plan Notice and/or the Distribution Agent’s attempts to obtain information. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

IV. TAX COMPLIANCE

29. The Tax Administrator shall handle the tax obligations of the Distribution Fund. In accordance with the Appointment Order, the Tax Administrator will be compensated for reasonable fees and expenses from the Distribution Fund.

30. The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF 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) Requesting funds necessary for the timely payment of all applicable taxes, the 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 imposed on distributions from the Distribution Fund.

V. DISTRIBUTION AGENT

31. Catherine E. Pappas, a SEC employee, will be the distribution agent for the Distribution Fund (“Distribution Agent”). As an SEC employee, the Distribution Agent shall receive no compensation, other than her regular salary as an SEC employee, for her services in administering the Distribution Fund.

32. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; maintaining the SEC’s public webpage for this matter: <https://www.sec.gov/divisions/enforce/claims/thomas-gity.htm>, cooperating with the Tax Administrator appointed by the Court to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); causing the disbursement of the Distribution Fund in accordance with this Plan and this Court’s orders; and researching and reconciling errors and reissuing payments, when possible.

33. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the SEC staff. If a change is deemed material by the SEC staff, Court approval is required to amend the Plan prior to implementation.

34. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown, if agreed upon by the SEC staff.

VI. PLAN PROCEDURES

Specification of Preliminary Claimants

35. Using information obtained during and after its investigation, the SEC has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of their investment with the Defendant during the Relevant Period.

Locating and Notifying Preliminary Claimants

36. Within thirty (30) days of Court approval of the Plan, the Distribution Agent will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

Undeliverable Mail

37. If any mailing is returned as undeliverable, the Distribution Agent will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Distribution Agent will then redirect the correspondence to the Preliminary Claimant's new address. If the Distribution Agent cannot find additional contact information, the mailing is returned again, and the Distribution Agent, despite best practicable efforts, cannot find alternative, verified, contact information, the Distribution Agent, in its discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

38. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

Procedures to Request Plan Notice

39. Any Person who did not receive a Plan Notice as described in paragraph 36 and/or notice of the filing of this Plan with the Court, but who is aware of this Plan (e.g., through other Preliminary Claimants or on www.sec.gov) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent, in writing, within forty-five (45) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The communication should be directed to:

SEC Office of Distributions
Attn: Catherine E. Pappas, Distribution Agent
(*SEC v. Gity, et al.*, 20-CV-14342-AMC-SM (S.D. Fl.))
100 F Street NE
Mail Stop 5012

Washington, DC 20549

The Distribution Agent will send the Person a Plan Notice within fifteen (15) days of receiving the Person's documentation, if the Distribution Agent determines that the Person should have received a Plan Notice.

Failure to Respond to Plan Notice

40. If a Preliminary Claimant was requested to respond and fails to respond within thirty (30) days from the initial mailing of the Plan Notice, the Distribution Agent will make no fewer than two (2) attempts to contact the Preliminary Claimant by whatever alternative contact information is available, including telephone or email, and if no alternative contact information is available, by a second mailing. The second attempt will take place no more than sixty (60) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

Dispute Process

41. Disputes will be limited to the amount of the calculated Investment and Recovery. Within thirty (30) days of the initial mailing of the Plan Notice, the Distribution Agent must receive a written communication detailing any dispute along with any supporting documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

Final Determination Notices

42. Within ninety (90) days of the initial mailing of the Plan Notices, the Distribution Agent will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 41 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 36 above, if and as required, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

Distribution Methodology

43. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

44. Payees will be identified, and Distribution Payments determined, in accordance with the "rising tide" methodology as set forth in the Plan of Allocation.

45. No Distribution Payments will be made for less than \$10.00.

46. There may be one or more distributions under the Plan in accordance with paragraph 61.

Establishment of a Reserve

47. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

48. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 62 below.

Preparation of the Payment File

49. Within one hundred fifty (150) days of Court approval of the Plan, the Distribution Agent will compile the Payee information, including the name, address, any amounts to be withheld for taxes, and the amount of the Distribution Payment for all Payees (the "Payee List"), necessary to make disbursements through BFS.¹

Distribution of the Distribution Fund

50. After preparation of the Payee List, the SEC will petition the Court for authority to disburse funds from the Net Available Distribution Fund for distribution to Payees in accordance with the Payee List. The BFS will mail checks or electronically transfer funds as instructed by the Distribution Agent and in accordance with the Court's order.

51. All checks will bear a stale date of three hundred sixty (360) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the BFS will be instructed to stop payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate their check by the stale date, and the funds will remain in the Distribution Fund, except as provided in paragraph 56.

52. All Distribution Payments will 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 Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after three hundred sixty (360) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees

¹ Pursuant to the April 12 Order, if any of Bitcoin Investors FL, LLC, V & S Holdings Group, LLC, Chessler Holders, LLC, C & S Holdings, LLC, CM Rubino Enterprises LLC, or Craig Rubino are determined to be a Payee under a Court-approved distribution plan, True North Advisors, LLC will be reflected as the Payee on the Payee List in their stead and the respective Distribution Payment will be made directly to True North Advisors, LLC. See ECF No. 118.

characterizing a Distribution Payment will be submitted to the Tax Administrator for review and approval.

53. All Distribution Payments, either on their face or in the mailing described in paragraph 52, will clearly indicate that the money is being distributed from the Distribution Fund established by the Court to compensate investors for harm as a result of securities law violations.

Post Distribution; Handling of Returned or Uncashed Checks; and Reissues

54. The Distribution Agent shall use her best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Distribution Agent as “undeliverable.” If new address information becomes available, the Distribution Agent will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than three hundred sixty (360) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent is unable to find a Payee’s correct address, the Distribution Agent, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Distribution Fund for distribution, if feasible, to the remaining Payees.

55. The Distribution Agent shall use her best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose electronic payment did not go through. If the Distribution Agent is able to obtain new information, the Distribution Agent will re-send the payment, if and as appropriate. If new payment information is not available after a diligent search, the Distribution Agent, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Distribution Fund for distribution, if feasible, to the remaining Payees.

56. The Distribution Agent will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void one year after the date of reissuance, and in no event will a check be reissued after the stale date of the original check without good cause found by the Distribution Agent.

57. The Distribution Agent will work with the SEC Office of Financial Management (“OFM”) and BFS to maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent, working with OFM, is responsible for researching and reconciling errors and reissuing payments when

possible. The Distribution Agent, working with OFM, is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Distribution Fund.

58. The Distribution Agent will make and document its best efforts to contact Payees to follow-up on the status of returned electronic payments and uncashed distribution checks (other than those returned as “undeliverable”). The Distribution Agent may cause such payments to be reissued, subject to the time limits detailed herein.

59. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee’s Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

Receipt of Additional Funds

60. Should any additional funds be received pursuant to SEC or Court Order, agreement, or otherwise, prior to the Court’s termination of the Distribution Fund, such funds will be added to the Distribution Fund and distributed, if feasible, in accordance with the Plan.

Disposition of Undistributed Funds

61. If funds remain following a distribution and payment of all Administrative Costs, the Distribution Agent may petition the Court to make subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

62. A residual within the Distribution Fund will be established for any amounts remaining after the final disbursement to Payees from the Distribution Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the SEC, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

63. All funds remaining in the Residual that are infeasible to distribute to investors will be held pending a final accounting.

Payment of Administrative Costs

64. All Administrative Costs are to be paid by the Distribution Fund, pursuant to a Court Order.

Filing of Reports and Accountings

65. Upon completion of all distributions to Payees and payment of all Administrative Costs pursuant to the procedures described above, the Tax Administrator will provide to the Distribution Agent a final accounting on a standardized form provided by the SEC staff.

66. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).² If distribution of the Residual to investors is infeasible, the Distribution Agent may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.³

Termination of the Distribution Fund

67. The Distribution Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the SEC staff, has been submitted by the Distribution Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the Commission's recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).

68. Once the SEC staff has reviewed and accepted the final accounting, the Commission staff will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Distribution Fund.

69. Once the Distribution Fund has been terminated, no additional payments will be made whatsoever.

² Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply "to any action or proceeding that is pending on, or commenced on or after, the date of" the NDAA's enactment. NDAA, Section 6501(b).

³ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

Exhibit A

PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses on their investment(s) with the Defendant between January 1, 2018 and January 30, 2019, inclusive (the “Relevant Period”).⁴ Based upon records obtained by the SEC during and after its investigation, the Distribution Agent has identified those investors, or their lawful successors, who may have suffered a loss from their investment with the Defendant during the Relevant Period (the “Preliminary Claimants”).

The Distribution Agent will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as his, her, or its Investment less his, her, or its Recovery.

If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

Any Preliminary Claimant who suffered a Recognized Loss greater than \$0.00 pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

The Distribution Agent will identify Payees and the amount to be distributed to each Payee in accordance with the “rising tide” methodology:

- (a) The Distribution Agent will create a list of Eligible Claimants (the “Preliminary List”).
- (b) For each Eligible Claimant on the Preliminary List, the Distribution Agent will calculate his, her, or its “Individual Recovery Ratio” as his, her, or its Recovery divided by his, her, or its Investment.
- (c) Using the Preliminary List, the Distribution Agent will calculate the “Equal Recovery Ratio” as the sum of the Recoveries for all Eligible Claimants plus the amount of the Net Available Distribution Fund, divided by the sum of the Investments for all Eligible Claimants.
- (d) An Eligible Claimant whose Individual Recovery Ratio exceeds the Equal Recovery Ratio will be removed from the Preliminary List and deemed ineligible to receive a distribution under this Plan of Allocation.
- (e) The Distribution Agent will re-calculate the Equal Recovery Ratio for the remaining Eligible Claimants as in step (c) and exclude Eligible Claimants whose Individual Recovery Ratios exceed the re-calculated Equal Recovery Ratio as in

⁴ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

step (d) iteratively, until all remaining Eligible Claimants have Individual Recovery Ratios less than or equal to the re-calculated Equal Recovery Ratio.

- (f) The Distribution Agent will calculate the “Tentative Distribution” for each remaining Eligible Claimant by multiplying the final Equal Recovery Ratio by the Eligible Claimant’s Investment, and subtracting from that amount the Eligible Claimant’s Recovery.
- (g) An Eligible Claimant whose Tentative Distribution is less than the “Minimum Distribution Amount” of \$10.00 will be removed from the Preliminary List and deemed ineligible to receive a distribution and steps (e) and (f) will be repeated until each remaining Eligible Claimant’s Tentative Distribution is equal to or greater than the Minimum Distribution Amount.
- (h) The Eligible Claimants remaining on the Preliminary List will be Payees and the respective final Tentative Distribution amounts will be the Distribution Payments directed to them, subject to the April 12 Order.

Additional Provisions

Subsequent Distributions: In the event of subsequent distributions, the steps in the rising tide calculations in paragraphs (a) through (h) set forth above will be repeated. Any Eligible Claimant who was removed from the Preliminary List in a previous distribution and deemed ineligible pursuant to paragraphs (d) or (g) above will be reconsidered in any subsequent distribution. The amount of any Distribution Payment paid to an Eligible Claimant in a previous distribution will be considered a Recovery for the Eligible Claimant in each subsequent distribution.

Reasonable Interest: At the final distribution, as determined by the Distribution Agent, if all Eligible Claimants have achieved an Individual Recovery Ratio of 100% and sufficient funds remain, the Distribution Agent, in consultation with the SEC staff, may pay Eligible Claimants for the time value of his, her, or its respective Recognized Loss as calculated in connection with the initial distribution. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay the full amount of Reasonable Interest calculated for each Eligible Claimant, each Payee will receive Reasonable Interest from the excess funds in the proportion of the Distribution Payment calculated for him, her, or it, to the aggregate Distribution Payments calculated for all other Payees.

Distribution Payment Limitation: In no event will a Payee receive from the Distribution Fund more than his, her, or its Recognized Loss in any distribution, nor will the sum of the Distribution Payments through subsequent rounds, if any, exceed the Recognized Loss calculated in the initial distribution, plus Reasonable Interest, if any.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**SECURITIES AND EXCHANGE
COMMISSION**

Plaintiff,

v.

THOMAS GITY, SR. ,

Defendant, and

THOMAS GITY, JR., et al.,

Relief Defendants.

Case No. 2:20-CV-14342-AMC-SM

Hon. Aileen M. Cannon

(Proposed) Order Approving a Distribution Plan

The Court having reviewed the Motion of Plaintiff Securities and Exchange Commission (the “SEC”) for an Order to Show Cause relating to the SEC’s proposed distribution plan (the “Plan”) for collections in this action (the “Distribution Fund”), the accompanying Memorandum in Support of Entry of an Order Approving a Distribution Plan, and the Plan;

AND the steps set forth in the Order to Show Cause (ECF No. 127) relating to notice of the proposed distribution plan having been completed;

AND, pursuant to the Order to Show Cause, the SEC having filed a Notice informing the Court that no objections to the proposed plan have been submitted as of the date of that Notice, and that the Plan and the Order to Show Cause have been published in accordance with Section I of that Order;

AND having considered all arguments presented and for good cause shown;

IT IS HEREBY ORDERED that:

1. The Plan (ECF No.126-3) is hereby approved; and
2. The Plan shall govern the administration and distribution of the Distribution Fund.

SO ORDERED, this ____ date of _____, 2022,

Hon. Aileen M. Cannon
U.S. District Court Judge