Exhibit A to Memorandum

(Proposed Plan)

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

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| **SECURITIES AND EXCHANGE COMMISSION,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**PALM HOUSE HOTEL, LLLP, et al.,**<br><br>**Defendants and Relief Defendants.** | **Case No.: 9:18-CV-81038-DMM**<br><br>**(Proposed) Plan of Distribution** |

## Introduction

1. On August 3, 2018, the Securities and Exchange Commission (the "SEC") filed a complaint (the "Complaint") against Palm House Hotel, LLLP ("PHH"), South Atlantic Regional Center, LLC ("SARC"), Joseph J. Walsh, Sr. ("Walsh"), Robert V. Matthews ("Matthews") (collectively, the "Defendants"), and named 160 Royal Palm, LLC ("Royal Palm") and United States Regional Economic Development Authority LLC d/b/a EB5 Petition ("USREDA") as relief defendants (collectively, the "Relief Defendants"). The SEC alleged that, from November 2012 to March 2015, the Defendants defrauded 88 foreign investors participating in the Immigrant Investor Program (the "EB-5 Program") out of approximately $44 million dollars invested in PHH by misrepresenting that PHH would loan investor funds to Palm House LLC to acquire, develop, and operate the Palm House Hotel located in Palm Beach, Florida. The SEC alleged that, instead, Walsh and Matthews misappropriated a significant portion of the investor funds.[1]

2. On November 20, 2019, the Court entered final judgment against Royal Palm, ordering Royal Palm to pay disgorgement of $24,452,841.00 and prejudgment interest of $3,218,373.35, for a total monetary judgment of $27,671,214.35.[2] By final judgments entered on March 11, 2020, the Court ordered SARC, Walsh and USREDA to pay a total of $65,172,165 in disgorgement and prejudgment interest, and ordered Walsh to pay a civil penalty of $8,078,000.[3] Each of the final judgments provide that the SEC may propose a plan to distribute collected funds, subject to the Court's approval.[4] The Walsh final judgment provides that the plan may provide for a distribution pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.[5]

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[1] ECF No. 1.
[2] ECF No. 67.
[3] ECF Nos. 93-95.
[4] ECF Nos. 67, 93-95.
[5] ECF No. 94.

3. The SEC has collected over $6.6 million in disgorgement against the $27.6 million monetary judgment against Royal Palm through a distribution from Royal Palm's Chapter 11 bankruptcy proceedings in the Southern District of Florida (the "Distribution Fund").[6] Additional collections in this action; amounts directed to this Court for inclusion in the Distribution Fund by court order, agreement, or otherwise; and accrued interest will be added to the Distribution Fund. For purposes of this distribution plan, additional collections will be applied first to ordered disgorgement, then ordered penalty, and finally, to interest.

4. The Distribution Fund is deposited in an interest-bearing account at the U.S. Treasury's Bureau of Fiscal Service.

5. By Order dated June 18, 2020, this Court appointed Miller Kaplan Arase LLP as Tax Administrator (the "Tax Administrator"), JND Legal Administration as Distribution Agent (the "Distribution Agent"), and authorized the SEC to pay all tax obligations and administrative fees and expenses without further Court Order (the "Appointment Order").[7]

6. This distribution plan (the "Plan") was developed jointly by the Distribution Agent, the Tax Administrator, and the SEC staff in accordance with practices and procedures customary in Distribution Fund administrations. The Plan governs the administration and distribution of the Distribution Fund and sets forth the method and procedures for distributing the assets of the Distribution Fund to investors harmed by the conduct alleged in the Complaint.

## **Definitions**

7. In addition to words otherwise defined herein, the following definitions apply to the Plan:

(a) "Administrative Costs" means any costs and expenses of the distribution, including without limitation the fees and expenses of the Tax Administrator and the Distribution Agent, tax obligation payments, and investment costs. All Administrative Costs will be paid by the Distribution Fund.

(b) "Bankruptcy Proceedings" refer to the bankruptcy proceedings of the Defendants, Relief Defendants, and/or related parties in which claims have been filed on behalf of the SEC and/or by Potentially Eligible Investors, including *160 Royal Palm, LLC*, 18-bk-19441 (Bankr. S.D. Fl.); *United States Regional Economic Development Authority LLC*, 19-bk-25780 (Bankr. S.D. Fl.); *United States Regional Economic Development Authority, Inc.*, 19-bk-25799 (Bankr. S.D. Fl.); *Robert V. Matthews*, 17-bk-23426 (Bankr. S.D. Fl.); and *South Atlantic Regional Center, LLC*, 19-bk-25762 (Bankr. S.D. Fl.).

(c) "Distribution Payment" means the payment made to each Eligible Investor in accordance with the Plan.

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[6] 160 Royal Palm, LLC, 18-bk-19441 (Bankr., S.D. Fl.).
[7] ECF No. 100.

(d) "Eligible Investor" means a Potentially Eligible Investor who is not an Excluded Party, and who is determined by the Distribution Agent to be eligible under the Plan for a Distribution Payment.

(e) "Excluded Party" means (i) the Defendants, the Relief Defendants, and any of their assigns, heirs, spouses, parents, dependents, or controlled entities; (ii) a Potentially Eligible Investor whose Recovery equals or is greater than their Investment; (iii) a Potentially Eligible Investor who, despite reasonable efforts by the Distribution Agent, cannot be located or is unresponsive; (iv) a Potentially Eligible Investor whose Distribution Payment is less than the Minimum Distribution Amount; and (v) the Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as Distribution Agent.

(f) "Investment" is the total amount paid by the Potentially Eligible Investor to the Defendants in connection with the purchase of interest(s) in the Security, generally comprised of the $500,000 investment and an administrative fee. If the Potentially Eligible Investor purchased multiple interests in the Security, the Investment will be the aggregate of the amount paid. Investment does not include a Potentially Eligible Investor's attorney fees or attorney costs associated with their interest(s) in the Security.

(g) "Minimum Distribution Amount" means the specified dollar amount that a proposed Distribution Payment must equal or exceed in order for a distribution to be made to an Eligible Investor. The Minimum Distribution Amount shall be $25.00.

(h) "Net Available Distribution Fund" means the Distribution Fund, including accrued interest, less Administrative Costs.

(i) "Net Loss" means a Potentially Eligible Investor's Investment less Recovery.

(j) "Plan Methodology" shall mean the methodology used to determine eligibility and calculate Distribution Payments as set forth below, ¶¶ 16-18.

(k) "Potentially Eligible Investor" means any individual or entity, or their lawful successors, who purchased the Security and suffered a loss as a result of the conduct described in the Complaint.

(l) "Recovery" means a Potentially Eligible Investor's recovery of some or all of their Investment through the Bankruptcy Proceedings or through a distribution in accordance with this Plan, including amounts authorized by a Court or otherwise but not yet received by the Potentially Eligible Investor. Recovery includes the full benefit conferred on the Potentially Eligible Investor, including any offset to pay attorney fees.

(m) "Recovery Ratio" is a calculation of Recovery as a fraction of the Eligible Investor's Investment. Interim calculations of the Recovery Ratio will change until the Distribution Agent has identified all Eligible Investors.

(n) "Represented Potentially Eligible Investors" means Potentially Eligible Investors who are represented by counsel or a third-party and whose represented status and the nature of the representation has been disclosed to the Distribution Agent along with accurate contact information for the counsel or third-party.

(o) "Security" means limited partnership interests in Palm House Hotel LLLP.

(p) "Tentative Distribution" is an interim calculated distribution amount under ¶ 16 of the Plan.

## The Distribution Agent

8. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Plan and the Appointment Order. Among other things, the Distribution Agent will be responsible for: overseeing the administration of the Distribution Fund; obtaining accurate contact and payment information for the Eligible Investors; establishing a website and staffing a call center to address inquiries; preparing communications in English and Chinese, as appropriate; preparing accountings; cooperating with the Tax Administrator in providing the information necessary to accomplish income tax and other federal and local tax rules and regulations compliance; determining and ensuring compliance, as appropriate, with all foreign jurisdiction requirements for serving notices and otherwise implementing the Plan; taking antifraud measures; performing outreach on returned payments and stale checks; reporting to the SEC staff and the Court as required; and distributing money from the Distribution Fund in accordance with the Plan.

9. 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 to be material by SEC staff, Court approval is required prior to implementation.

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

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

12. As set forth in the Appointment Order, the Distribution Agent will be entitled to payment from the Distribution Fund of reasonable fees and expenses incurred in the performance of its duties (including any such fees and expenses incurred by agents, consultants, or third parties retained by the Distribution Agent in furtherance of its duties).

13. The Distribution Agent will retain all claims materials in paper and electronic form, and all other distribution records in either (or both) form for a period of six (6) years from

the date of submission of a final fund accounting to the Court, and will thereafter transfer the documents to the SEC if and as directed by the SEC staff. In addition, the Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Distribution Fund six (6) months after the closing of the Escrow and Deposit Accounts (defined below), or at such earlier time as the Distribution Agent determines with concurrence of the SEC staff.

## Tax Compliance

14. The Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), as amended. 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. Regs. § 1.468B-1 to § 1.468B-5, as set forth in the Appointment Order.

15. Payment of tax obligations and tax related costs and expenses will be requested and made from the Distribution Fund in accordance with the Appointment Order.

## Plan Methodology

16. This methodology is designed to compensate Eligible Investors based on their losses from purchases of the Security due to the conduct of the Defendants. The amount to be distributed to each Eligible Investor will be determined as described below.

(a) The Distribution Agent will remove from the list of Potentially Eligible Investors those excluded under ¶ 7(e)(i), (iii), and (v), creating a "Preliminary List" of Eligible Investors;

(b) The Distribution Agent will calculate the Net Loss of each Potentially Eligible Investor in the Preliminary List and remove from the Preliminary List those excluded under ¶ 7(e)(ii);

(c) Using the Preliminary List, the Distribution Agent will calculate the Recovery Ratio;

(d) For each Potentially Eligible Investor on the Preliminary List, the Distribution Agent will calculate the Potentially Eligible Investor's Tentative Distribution by multiplying the Recovery Ratio by the Potentially Eligible Investor's Investment, and subtract from that product the Potentially Eligible Investor's Recovery;

(e) For any Potentially Eligible Investor with a Tentative Distribution of less than Minimum Distribution Amount, the Potentially Eligible Investor will be removed from the Preliminary List and their Tentative Distribution will remain in the Distribution Fund. The Potentially Eligible Investors remaining on the Preliminary List will be deemed Eligible Investors,

and steps 16(c) and (d) will be repeated to determine the Distribution Payment to each Eligible Investor.

17. Subject to the Reasonable Interest provision that follows, in no event will an Eligible Investor receive a Distribution Payment that exceeds the Eligible Investor's Net Loss.

18. If the Net Available Distribution Fund has funds in excess of that necessary to pay each Eligible Investor a Distribution Payment equal to the amount of their Net Loss, the Distribution Agent, in consultation with the SEC staff, may include in the Distribution Payments an additional amount to compensate each Eligible Investor for the time value of their respective Net Loss ("Reasonable Interest").[8]

**Identification of and Notice to Potentially Eligible Investors**

19. Based on information obtained by the SEC staff during its investigation and otherwise, and the review and analysis of applicable records, the SEC staff has reasonably concluded that it has all records necessary to calculate harm as described in ¶¶ 16-18. As a result, the Distribution Fund is not being distributed according to a claims-made process.

20. Within thirty (30) days following the entry of a Court Order approving the Plan, the Distribution Agent shall:

(a) Establish and maintain a website devoted solely to the Distribution Fund. The Distribution Fund's website, located at www.PalmHouseHotelFund.com, will be in English and Chinese and will make available a copy of the approved Plan, the Plan Notice (described below), and related materials in downloadable form; and such other information that the Distribution Agent believes will be beneficial to investors.

(b) Establish and maintain toll-free telephone numbers for Potentially Eligible Investors to call and speak to a live representative of the Distribution Agent, in English and Chinese, during its regular business hours or, outside of such hours, to hear pre-recorded information in English and Chinese about the Distribution Fund and leave a voicemail message. As deemed appropriate by the Distribution Agent in consultation with the SEC, communications in additional languages will be included.

(c) Establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Distribution Agent to Potentially Eligible Investors as well as on the Distribution Fund's website.

(d) Establish and maintain a case specific database of all Potentially Eligible Investors based upon information provided to and obtained by the Distribution Agent, including the last

[8] Reasonable Interest will be calculated using the short-term Applicable Federal Rate, compounded quarterly from the approximate date of the loss through the approximate date of the disbursement of the Distribution Fund.

known physical and email addresses. For Represented Potentially Eligible Investors, the Distribution Agent shall request from counsel the most up-to-date contact information for their clients as needed. For other Potentially Eligible Investors, and any Represented Potentially Eligible Investors for whom counsel does not provide updated contact information, the Distribution Agent will make reasonable efforts to obtain updated contact information, including reaching out by telephone, electronic mail, and/or hard copy. If the Distribution Agent, despite reasonable efforts, is unable to find a Potentially Eligible Investor's correct address or contact information, the Distribution Agent, in its discretion, may determine that Potentially Eligible Investor to be excluded from the distribution pursuant to ¶ 7(e)(iii).

(e) Within thirty (30) calendar days of Court approval of the Plan, the Distribution Agent will send via email to each Potentially Eligible Investor a notice (the "Plan Notice") in English and Chinese 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; a link to the Distribution Agent's website devoted to this matter; a description of the tax information reporting and other related tax matters; and the name and contact information for the Distribution Agent in order to provide any requested information or to contact with questions regarding the distribution. Subject to ¶ 24, below, the Plan Notice will request from Potentially Eligible Investors any information necessary to complete the distribution, including payment information so that if the Potentially Eligible Investor is determined to be an Eligible Investor, the Distribution Payment can be made by wire transfer, check, or otherwise. The Plan Notice may also require the completion of tax forms deemed necessary by the Tax Administrator. The Plan Notice will provide to the Potentially Eligible Investors directions for the secure uploading and/or sending of the requested information to the Distribution Agent. If no email address has been confirmed for the Potentially Eligible Investor, the Distribution Agent will send the Plan Notice to the last known address of the Potentially Eligible Investor via overnight mail.

21. The Distribution Agent will have available Chinese translation services, and use as appropriate, additional translation services, in connection with all contact with investors, including the Plan Notice and the Distribution Fund's website and toll-free number, so that all communications can be as effective as practicable. Translations may be requested by contacting the Distribution Agent by mail, email, or the toll-free number.

22. The SEC staff retains the right to review and approve any material posted on the Distribution Agent's website dedicated to this matter (the "Distribution Fund's Website"), communications with investors, and any scripts used in connection with communications with investors.

23. Prior to any mailing under the Plan, the Distribution Agent will run a National Change of Address search on any domestic address to retrieve updated U.S. addresses, and make reasonable efforts to confirm updated addresses for foreign addresses.

24. In addition to the dissemination of the Plan Notice pursuant to ¶ 20(e) above, the Distribution Agent will provide or make available to each Potentially Eligible Investor a copy of the Plan Notice by posting it on the Distribution Fund's Website and providing it to

Potentially Eligible Investors on request. With respect to any requests in the Plan Notice for information from Represented Potentially Eligible Investors, the Distribution Agent will consult with their counsel or representative to determine if counsel or the representative can provide, for each of their Potentially Eligible Investor clients, the requested information, and will provide to counsel a way to securely upload and/or provide the information.

25. With respect to information submitted to the Distribution Agent, including any requests that payments be made to a designee, the Distribution Agent will take whatever steps it believes reasonable and necessary to verify the identity of the submitter, or on whose behalf the submission was made, as a Potentially Eligible Investor and, as applicable, an Eligible Investor. If the Distribution Agent is not able to verify the identity to its satisfaction, the Distribution Agent may deny the request.

26. If a Plan Notice is returned as undeliverable, the Distribution Agent will make reasonable efforts to ascertain a correct address and will document all such efforts. If another address is obtained, the Distribution Agent will then resend the Plan Notice to the Potentially Eligible Investor's new address within thirty (30) days of receipt of the returned mail. Additional efforts by the Distribution Agent to identify new addresses for returned undeliverable mail will be conducted as necessary and economically reasonable after consultation with the SEC staff. The Distribution Agent, with SEC staff approval, may engage a third-party search firm to conduct more rigorous searches for persons whose mailing is returned as undeliverable; all such costs shall be paid by the Distribution Fund. If the Plan Notice is returned again, and the Distribution Agent, despite reasonable efforts, is unable to find a Potentially Eligible Investor's correct address or contact information, the Distribution Agent, in its discretion, may determine that Potentially Eligible Investor to be excluded from the distribution pursuant to ¶ 7(e)(iii).

27. Any Eligible Investor 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 for Distribution of the Net Available Distribution Fund

28. The Distribution Agent, in consultation with the Tax Administrator and the SEC staff, shall determine the Net Available Distribution Fund by retaining a prudent reserve to pay Administrative Costs. After all distributions and payment of all Administrative Costs, any remaining amounts in the reserve will become part of the Residual defined in ¶ 48.

29. Within seventy-five days following the date of Court approval of the Plan, the Distribution Agent shall compile the payee information, including the names, addresses, and Distribution Payments of all Eligible Investors ("Payee List"). The Distribution Agent will also provide a "Reasonable Assurances Letter" to the SEC staff, representing that the Payee List: (a) was compiled in accordance with the Plan; (b) is accurate as to Eligible Investors' names, address, and Distribution Payment; and (c) provides all information necessary to make a payment equal to the amount of the applicable Distribution Payment for such Eligible Investor, including any necessary withholding amount.

30. Upon the SEC staff's receipt, review, and acceptance of the Payee List and Reasonable Assurances Letter, and without further Court Order, the SEC staff will cause the aggregate amount of the Distribution Payments, including any withholding amounts, to be transferred from the SEC to the Escrow Account defined in paragraph 33, below, for distribution to Eligible Investors (and the Tax Administrator, as appropriate) pursuant to the Plan. The Payee List shall, upon request, be made available to the Court under seal.

31. The Distribution Agent shall use its best efforts to commence mailing Distribution Payment checks or effect electronic payments within fifteen (15) business days of the transfer of the funds into the Escrow Account (as defined below). All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

32. Prior to the disbursement of the Net Available Distribution Fund, the Distribution Agent will establish account(s) described in the following paragraph at a United States commercial bank (the "Bank") not unacceptable to the SEC staff.

33. The Distribution Agent shall establish an escrow account ("Escrow Account") pursuant to an escrow agreement (the "Escrow Agreement") to be provided by SEC staff, in the name of and bearing the Employer Identification Number of the QSF. The Distribution Agent shall also establish with the Bank a separate deposit account (the "Deposit Account") (*e.g*. controlled distribution account, managed distribution account, linked checking and investment account) for the purpose of funding Distribution Payments to be distributed to Eligible Investors by the Distribution Agent pursuant to the Plan. The name of each account shall be in substantially the following form: "Palm House Distribution Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *SEC v. Palm House Hotel LLLP, et al*., Case No. 18-CV-81038-DMM (S.D. Fl.)."

34. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors and Administrative Costs, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

35. 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.

36. The Distribution Agent shall deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum reasonable net return, taking into account the

safety of such deposits or investments. In consultation with SEC staff, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow and the Deposit Accounts.

37. All interest earned will accrue for the benefit of the Distribution Fund and all costs associated with the Escrow and Deposit Accounts will be paid by the Distribution Fund.

38. All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a payment.

39. If payment instructions have been provided and verified by the Distribution Agent, Distribution Payments to Eligible Investors will be made by wire transfer or by any method otherwise approved by the Distribution Agent. For any wire or other electronic transfer, the exact amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee account in accordance with written instruction provided to the Escrow Bank by the Distribution Agent. In the event that a wire or electronic transfer to an Eligible Investor is unsuccessful, the Eligible Investor has not provided sufficient information to the Distribution Agent, or the Distribution Agent has not been able to verify the provided wire transfer or electronic payment information to its satisfaction, the Distribution Payment will be made by check sent by overnight mail to the Eligible Investor. In consultation with the SEC staff and subject to the controls set forth herein, the Distribution Agent shall have the discretion to make a payment by electronic transfer other than wire transfer if appropriate under the circumstances. All Distribution Payments will be made in U.S. currency.

40. All Distribution Fund checks presented for payment will be subject to "positive pay" controls before being honored by the Bank, at which time funds will be transferred from the Escrow Account to the Deposit Account to pay the approved checks. All electronic payments will be initiated by the Distribution Agent using a two-party checks and balances system, whereby completion of a wire transfer or electronic payment will require authorization by two members of the Distribution Agent's senior staff.

41. Except as provided in ¶ 45, below, all checks issued to Eligible Investors by the Distribution Agent shall bear a stale date of one hundred twenty (120) days. Checks that are not negotiated before the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Such Eligible Investor's claim is extinguished as of the stale date and the funds will remain in the Net Available Distribution Fund. If a check reissue has been requested before the stale date, such request is governed by the following section (Uncashed Checks and Reissues).

42. All Distribution Payments shall be preceded or accompanied by a communication that will include, as appropriate: (a) a statement characterizing the distribution; (b) a statement from the Tax Administrator regarding the tax consequences of Distribution Payments and informing Eligible Investors that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult their tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after one hundred twenty days (120) days; and (d) providing contact information for

the Distribution Agent, to be used in the event of any questions regarding the distribution. All such communications shall be submitted to the SEC staff and the Tax Administrator for review and approval. Distribution Payments on their face or the accompanying notice, shall clearly indicate that the money is being distributed from a Distribution Fund established by the Court for the benefit of investors for harm as a result of the federal securities law violations described in the captioned action.

**Uncashed Checks and Reissues**

43. The Distribution Agent will work with the Bank and maintain information about uncashed checks, returned payments, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible and for maintaining a record of such efforts. The Distribution Agent is also responsible for accounting for all payments. The amount of all uncashed payments will continue to be held in the Net Available Distribution Fund.

44. Where new address and/or payment information becomes available, the Distribution Agent shall repackage the distribution check and send it to the new address, or resend the electronic payment. Where new address or payment information is not available after reasonable efforts (and in no event later than one hundred twenty (120) days after the initial issuance of checks or electronic payments) or if the distribution check or electronic payment is returned again, the check shall be voided and/or the payment not reissued, and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent, despite reasonable efforts, is unable to find an Eligible Investor's correct address or contact information, the Distribution Agent, in its discretion, may remove such Eligible Investor from the distribution and the allocated Distribution Payment will remain in the Net Available Distribution Fund for distribution, if practicable, to the remaining Eligible Investors.

45. The Distribution Agent will issue new payments to Eligible Investors upon the receipt of a valid, written request from the Eligible Investors prior to one hundred twenty (120) days after issuance of the first payment. Reissued checks will be void if not negotiated by sixty (60) days after issuance or sixty (60) days after the stale date of the original check, whichever is later.

46. Any request by an Eligible Investor or a lawful representative for issuance and/or reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If, in the sole discretion of the Distribution Agent, such change is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.

47. Subject to ¶¶ 26 and 44, above, regarding undeliverable mail, the Distribution Agent will make reasonable efforts to contact Eligible Investors to follow-up on the status of uncashed distribution checks or returned electronic payments and take appropriate action to follow-up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may reissue such checks or payments, subject to the time limits detailed herein.

**Disposition of Remaining Funds after Distribution**

48. A residual within the Distribution Fund (the "Residual") will be established for any amounts remaining after all assets have been disbursed. The residual may include, among other things, collections after the initial distribution, funds reserved for future Administrative Costs, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payments that were not delivered or accepted upon delivery, and tax refunds. After all Administrative Costs have been paid, all funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and transferred to the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act[9] after the final accounting is approved by the Court. Returning such money to Defendants would be inconsistent with the equitable principle that no person should profit from his own wrongdoing. Therefore, in these circumstances, distributing disgorged funds to the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act is the most equitable alternative.

49. The Distribution Agent, in consultation with SEC staff, may, if feasible, distribute the Residual, net a reserve for Administrative Costs, in accordance with the Plan, to all Eligible Investors who negotiated the checks or received the payment issued in the immediately preceding distribution or who received electronic payments, up to their Net Loss.

**Distribution Fund Reporting and Accounting**

50. The Distribution Agent will provide reports in accordance with the Appointment Order, including, in consultation with the Tax Administrator, a final accounting and final report.

**Termination of the Distribution Fund**

51. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Deposit Accounts will be transferred to the SEC.

52. Upon completion of the final report and accounting, the SEC staff will seek an Order from the Court, as appropriate, approving the final accounting; discharging the Distribution Agent; transferring the remaining Residual, and any amounts returned to the Distribution Fund in the future, to the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act; and terminating the Distribution Fund.

53. The Distribution Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:

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[9] 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 Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

(a) A final report and accounting has been submitted to, and approved by, the Court;

(b) All Administrative Costs have been paid; and

(c) The remaining Residual has been transferred to the SEC for transfer to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.

54. Once the Distribution Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

**Miscellaneous**

55. The Court reserves the right to amend this Plan from time to time, and retains exclusive jurisdiction over all claims arising in connection with this Plan, including, but not limited to, claims against the Distribution Agent or Tax Administrator asserting liability for violation of any duty imposed by this Plan or other Court order.

56. The Distribution Agent and the Tax Administrator are entitled to rely on all outstanding rules of law and Court orders.