

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

SATYAM COMPUTER SERVICES  
LIMITED

d/b/a

MAHINDRA SATYAM,

Defendant.

No. 1:11-cv-00672-ESH

**[PROPOSED] DISTRIBUTION PLAN**

**I. Introduction**

1. On April 5, 2011, the Securities and Exchange Commission (“SEC” or “Commission”) filed the instant settled, civil action against defendant Satyam Computer Services Limited d/b/a Mahindra Satyam (“Satyam”), an Indian company with depository shares trading on the New York Stock Exchange, alleging violations of the anti-fraud provisions of the federal securities laws. According to the Complaint, from at least 2003 through September 2008, Satyam deceived investors by falsifying the company's revenue, income, earnings per share, and interest bearing deposits.

2. On April 6, 2011, the Court entered a consent Final Judgment against Satyam, permanently enjoining the company from violating Sections 10(b), 13(a), 13(b)(2)(A) and

13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] ("Exchange Act") and related rules thereunder. The Final Judgment also imposed a civil penalty of \$10 million. Pursuant to the Final Judgment, on April 19, 2011, Satyam paid \$10 million into the Court Registry Investment System ("CRIS") account established in this action.

3. On April 5, 2011, the Commission instituted a related, public Administrative Proceeding against Satyam's independent auditors: Lovelock & Lewes; Price Waterhouse, Bangalore; Price Waterhouse & Co., Bangalore; Price Waterhouse, Calcutta; and Price Waterhouse & Co., Calcutta (collectively, "PW India") pursuant to Sections 4C and 21C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. The Commission found that PW India's audits of Satyam were not in accordance with Generally Accepted Accounting Standards ("GAAS"), nor were they in compliance with Public Company Accounting Oversight Board ("PCAOB") standards. Having found that PW India's conduct was a cause of Satyam's issuing materially false and misleading financial statements, the Commission ordered PW India to cease and desist from committing or causing violations of the Exchange Act, and ordered them to pay a civil penalty of \$6 million. On May 18, 2011, PW India paid these funds to the SEC.

4. On December 8, 2011, the Court ordered Respondents to transfer the \$6 million paid by PW India to the District Court and combine the funds with the \$10 million penalty paid by Satyam. In total, \$16 million received from Satyam and PW India will be distributed to harmed investors.

5. By Order dated September 27, 2016, the Court appointed Miller Kaplan Arase LLP as the tax administrator ("Tax Administrator") to execute all income tax reporting requirements, including the preparation and filing of tax returns for the Fund.<sup>1</sup> By Order dated October 3, 2016, the Court created a Fair Fund pursuant to Section 308(a) of Sarbanes-Oxley, to return the Fund to harmed investors ("Fair Fund") and appointed Rust Consulting, Inc. ("Rust") to serve as the distribution agent ("Distribution Agent") to oversee all aspects of the administration and distribution of the Fair Fund in accordance with the terms of a

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<sup>1</sup> Order to Appoint a Tax Administrator, Docket No. 9.

distribution plan to be approved by the Court, and in coordination with the Commission staff.<sup>2</sup>

## II. Definitions

- a. “**Check-Cashing Period**” means the ninety (90) days following the mailing of Distribution Payments to Eligible Claimants in accordance with this Distribution Plan.
- b. “**Claim Form**” means the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this Distribution Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Potential Claimant's purchases and dispositions of Eligible Securities during the Relevant Period and the tax identification number of the Potential Claimant.
- c. “**Claims Bar Date**” means the date established in accordance with this Distribution Plan by which Claim Forms and Release Forms must be postmarked by or submitted electronically in order to receive consideration under this Distribution Plan. Subject to certain extensions provided for in this Distribution Plan, the Claims Bar Date will be one hundred twenty (120) days from the Initial Mailing.
- d. “**Claims Packet**” means the materials relevant to submitting a claim that may be provided to Potential Claimants known to the Distribution Agent or to those who obtain such materials through a website or other appropriate delivery mechanisms. These materials will include a copy of the Fair Fund Notice and a Claim Form (together with instructions for the completion of the Claim Form). Claims Packets will be sent to Potential Claimants but will *not* be sent to Class Action Authorized Claimants.
- e. “**Class Action**” shall mean the settlement of the action *In re Satyam Computer Services Ltd. Securities Litigation*, No. 09-MD-2027-BSJ. The Class Action class period, January 6, 2004 through January 6, 2009, inclusive, was shorter

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<sup>2</sup> Order to Establish a Fair Fund and Appoint a Distribution Agent, Docket No. 11.

than the Relevant Period in this action, which is April 1, 2003 through January 6, 2009. Rust, the Distribution Agent for this Distribution Plan, also served as the claims administrator for the Class Action.

- f. “**Class Action Authorized Claimant**” shall mean a Person whose claim was authorized for payment in the Class Action.
- g. “**Days**” means calendar days, unless otherwise specified herein.
- h. “**Determination Notice**” means the notice sent by the Distribution Agent to Potential Claimants that submitted a deficient or ineligible Claim Form. The Determination Notice will provide to each Potential Claimant whose claim is deficient, the reason(s) for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding further necessary actions. In the event the claim is ineligible, the Determination Notice will state the reason for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim. The Distribution Agent will not send Determination Notices to Class Action Authorized Claimants, unless they have modified their claim.
- i. “**Distribution Agent**” shall refer to Rust Consulting, Inc., which is responsible for administering the Fair Fund in accordance with the terms of this Distribution Plan and the Court’s Orders.
- j. “**Distribution Payment**” means the payment to an Eligible Claimant in accordance with the terms of the Distribution Plan.
- k. “**Distribution Plan**” means the Distribution Plan in the form approved by the Court.
- l. “**Eligible Claimant**” shall mean all Class Action Authorized Claimants and those Potential Claimants that file a valid Claim Form or Release Form with the Distribution Agent on or before the Claims Bar Date who are finally determined by the Distribution Agent to be eligible for a distribution from the

Net Fair Fund as provided herein pursuant to the Plan of Allocation. “Eligible Claimants” in no event shall include:

- i. Any officer or director of the Defendants, or any subsidiary or affiliate of Defendants directly involved in the conduct detailed in the Complaint;
  - ii. Any employee or former employee of Defendants or any of its affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Complaint;
  - iii. Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct detailed in the Complaint, unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Claim Form;
  - iv. Any affiliates, assigns, creditors, heirs, distributees, spouses, parents, children or controlled entities of any of the foregoing Persons described in 1.i – 1.iii;
  - v. The Distribution Agent and those persons assisting the Distribution Agent in its role as Distribution Agent; or
  - vi. Any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law.
- m. “**Eligible Loss Amount**” is the amount of loss an Eligible Claimant incurred through the investment in Eligible Securities during the Relevant Period calculated in accordance with the Plan of Allocation, as detailed in Appendix 1, attached hereto.
- n. “**Eligible Securities**” shall refer to the American Depositary Shares (“ADS”) of Satyam traded on the New York Stock Exchange (“NYSE”), ticker symbol: NYSE: SAYCY.PK.

- o. “**Fair Fund**” shall mean the money paid into the CRIS by defendants pursuant to the terms of the Final Judgment, plus accumulated interest and earnings thereon, plus any additions thereto as may be provided by future Court Order or agreements in related cases or otherwise.
- p. “**Fair Fund Notice**” means a written notice from the Distribution Agent to Potential Claimants and Class Action Authorized Claimants informing them of the Fair Fund and the eligibility requirements, and explaining how to submit a claim. The notice will be both mailed and published according to the schedule detailed herein.
- q. “**Final Determination Notice**” shall mean the Distribution Agent’s written response to a written detailed request from a claimant requesting reconsideration of the Distribution Agent’s Determination Notice.
- r. “**Net Fair Fund**” shall mean the Fair Fund, plus earned interest, less any amounts expended or to be expended for administering the Fair Fund (e.g., reasonable fees and expenses incurred or to be incurred in administering this Distribution Plan, Court fees on income earned while the Fund is held with the CRIS, and the payment of taxes on the Fair Fund).
- s. “**Notice Publication**” means the publication of the Fair Fund Notice, or a notice closely resembling the Fair Fund Notice, in print or internet media in a manner deemed appropriate by the Distribution Agent and not unacceptable to the Commission staff.
- t. “**Person**” means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.
- u. “**Plan of Allocation**” means the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is set forth in Appendix 1 and attached hereto.

- v. **“Potential Claimants”** means those Persons, or their lawful successors, identified by the Distribution Agent as having possible claims to recover from the Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Fair Fund under this Distribution Plan but who are not Class Action Authorized Claimants.
- w. **“Release Form”** shall mean the materials to be provided to the Class Action Authorized Claimants. The Distribution Agent, in consultation with Commission Staff, shall prepare the Release Form, which shall include, at a minimum, a copy of the Fair Fund Notice, and instructions that the Class Action Authorized Claimant does not need to file a Claim Form in order to share in the distribution from the Fair Fund, but that since the Relevant Period is longer than the Class Action class period, a Class Action Authorized Claimant may update or modify his, her or its claim and instructions for doing so. The Release Form will also require a signature from the Class Action Authorized Claimant to release his, her or its Class Action transactional data for use in this action. Class Action Authorized Claimants who modify their Class Action claim will be deemed Potential Claimants.
- x. **“Relevant Period”** April 1, 2003 through January 6, 2009.
- y. **“Tax Administrator”** refers to Miller Kaplan Arase LLP, the firm which has been appointed by the Court as the Tax Administrator in this action.

### **III. Allocation Among Eligible Claimants**

#### **A. Identification of and Notice to Class Action Authorized Claimants and Potential Claimants**

6. The Distribution Agent shall, insofar as is practicable, use its best efforts to identify all Class Action Authorized Claimants from a review of the database maintained in the Class Action, and to identify Potential Claimants from a review of the trading records, claim filing information and any other communication included in the database maintained in the Class Action.

7. The Distribution Agent will build a database for purposes of administering the Fair Fund, containing the information outlined in paragraph 6 above, as well as information received from Potential Claimants in the Commission's action. If a previously approved claim is amended by a Class Action Authorized Claimant, the Distribution Agent will update the Fair Fund database to reflect the Class Action Authorized Claimant's modified claim.

8. Within seventy-five (75) 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 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 Potential Claimants;
- c. mail by United States First Class Mail a Claims Packet to each Potential Claimant known to the Distribution Agent and a Release Form to each Class Action Authorized Claimant known to the Distribution Agent;
- d. include in the Fair Fund Notice sent to each Class Action Authorized Claimant a statement informing Class Action Authorized Claimants that if the only Eligible Security transactions consist of those transactions for which a claim was previously authorized for payment in the Class Action, the claimant will need to fill out and complete a Release Form. The Fair Fund Notice also will notify each Class Action Authorized Claimant that if the claimant did engage in additional Eligible Security transactions during the Relevant Period for which a claim was not previously authorized in the Class Action, and would like to make a claim regarding such transactions, the claimant must submit the additional transactions on the Release Form with respect to those transactions only, and comply with the certification requirement;
- e. establish a website devoted solely to the Fair Fund. The Fair Fund website,

located at [www.SECSatyamFairFund.com](http://www.SECSatyamFairFund.com), will make available a copy of the Fair Fund Notice, the approved Distribution Plan, and provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions. The website will also include a copy of a Claim Form and related materials in a downloadable form, and such other information covering process or substance that the Distribution Agent believes will be beneficial to Potential Claimants. The Commission staff retains the right to review and approve any material posted on the Fair Fund website;

- f. provide a copy of the Distribution Plan and Claims Packet to the Commission staff to post the approved Distribution Plan and Claims Packet on the Commission's website, Information for Harmed Investors page, located at <https://www.sec.gov/divisions/enforce/claims.htm> and establish a link to the Fair Fund website;
- g. establish and maintain a toll-free telephone number for Potential Claimants and Class Action Authorized Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours, 8:30 a.m. to 5:00 p.m., EST. The Distribution Agent will advise the Commission staff of the toll-free telephone number; and
- h. publish a copy of a Summary Notice, approved by the Commission, on a single occasion in the National Edition of the Investor's Business Daily (as well as a release on the PR Newswire) within two weeks of the date of the mailing of the Fair Fund Notice to Potential Claimants.

9. Claims Packets will be available on the Fair Fund website to brokerages and other institutions that hold Eligible Securities in "street name" for the benefit of their customers who are the beneficial owners of the securities. The Distribution Agent will promptly provide a Claims Packet to any Potential Claimant upon request.

10. The Distribution Agent will provide a copy of the Distribution Plan and Fair

Fund Notice to the Commission staff to post the approved Distribution Plan and Fair Fund Notice on the Commission's website, Information for Harmed Investors page, located at <https://www.sec.gov/divisions/enforce/claims.htm> and establish a link to the Fair Fund website.

11. The Distribution Agent will attempt to locate any Potential Claimant or Class Action Authorized Claimant whose mailing is returned by the United States Postal Service ("USPS") as "undeliverable" and will document all such efforts. The Distribution Agent will utilize all means reasonably available to obtain updated addresses and forward any returned mail for which an updated address is provided or obtained.

#### **B. Claims Process**

12. The Claims Bar Date will be clearly identified on all materials as the calendar date one hundred twenty (120) days from the initial mailing. To avoid being barred from asserting a claim, each Potential Claimant and Class Action Authorized Claimant must submit to the Distribution Agent either a properly completed Claim Form, or a Release Form reflecting such Potential Claimant's claim, together with all required supporting documentation postmarked on or before the Claims Bar Date. A Claim Form or Release Form that is postmarked after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent after consultation with Commission staff.

13. All claims must be verified on the basis of a sworn Claim Form, Release Form, affidavit or declaration executed by or on behalf of the Potential Claimant under penalty of perjury under the laws of the United States.

14. Claims containing a) one hundred (100) or more transactions or b) claims submitted by an intermediary on behalf of twenty (20) or more accounts must be submitted electronically using the format provided by the Distribution Agent. The electronic filing template will be made available on the Fair Fund website. Files that do not comply with the format provided by the Distribution Agent may be rejected.

15. The burden to ensure the Claim Form or Release Form is properly and timely

postmarked and to prove receipt of the claim by the Distribution Agent will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their claims in a manner that will enable them to prove receipt of the claim by the Distribution Agent.

16. Claim Forms or Release Forms must be properly filled out per the instructions provided by the Distribution Agent, and must be accompanied by such documentary evidence as the Distribution Agent deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third party documentary evidence of purchases and dispositions of Eligible Securities during the Relevant Period, as well as holdings of Eligible Securities on pertinent dates.

17. All claims and supporting representations necessary to determine a Potential Claimant's eligibility to receive a distribution from the Fair Fund must be verified by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant or Class Action Authorized Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Potential Claimant's or Class Action Authorized Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

18. The Distribution Agent will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing the claim data and supporting documentation (or the lack thereof), verifying the claim, and calculating each Potential Claimant's or Class Action Authorized Claimant's Eligible Loss Amount pursuant to the Plan of Allocation. Each Potential Claimant or Class Action Authorized Claimant will have the burden of proof to establish the validity and amount of his, her, or its claim, and that they qualify as an Eligible Claimant. The Distribution Agent will have the right to request, and the Potential Claimant or Class Action Authorized Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

### **C. Deficiency and Claim Determination Process**

19. The Distribution Agent will provide a Determination Notice to each Potential Claimant that submitted a deficient or ineligible Claim Form, setting forth the Distribution Agent's conclusions concerning such claim.

20. The Determination Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to provide required information or documentation). The Determination Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any Potential Claimant with a deficient claim will have forty-five (45) days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

21. In the event the claim is denied, in whole or in part, the Determination Notice will state the reason for such denial. Any Potential Claimant seeking reconsideration of a denied claim must advise the Distribution Agent in writing within forty-five (45) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim.

22. The Distribution Agent will send, as appropriate, a Final Determination Notice to all Potential Claimants who responded to the Determination Notice in an effort to cure a deficiency or to seek reconsideration of a denied claim. The Distribution Agent will send such Final Determination Notices no later than sixty (60) days following receipt of documentation or information in response to the Determination Notice, or such longer time as the Distribution Agent determines is necessary for a proper determination concerning the claim.

23. The Distribution Agent may consider disputes of any nature presented by Potential Claimants, and will consult Commission staff as appropriate. The Distribution Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Distribution Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

24. The Potential Claimant has the burden of notifying the Distribution Agent of a change in his, her, or its current address and other contact information, and of ensuring that such information is properly reflected in the Distribution Agent's records.

25. The receipt of Eligible Securities by gift, inheritance, devise, or by operation of law will not be deemed to be a purchase of Eligible Securities, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in the instrument of inheritance. However, the recipient of Eligible Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of this Distribution Plan. Only one claim may be submitted with regard to the same transactions in Eligible Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

26. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include individual retirement accounts, and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will issue any Distribution Payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potential Claimants, the Distribution Agent will endeavor to distribute funds directly to the beneficial accountholders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.

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

#### **IV. Establishment of the Escrow Account**

28. Prior to disbursement of the Net Fair Fund, the Distribution Agent will

establish accounts described as follows at a U.S. commercial bank (“Bank”), not unacceptable to Commission staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Fair Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Fair Fund as custodian for the distributees of the Distribution Plan. The name of each account will be in the following form: “SEC v. Satyam Fair Fund, as custodian for the benefit of investors allocated a distribution pursuant to the Distribution Plan in *SEC v. Satyam Computer Services Limited d/b/a Mahindra Satyam*, No. 1:11-cv-00672 (D.D.C).”

29. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States (“U.S.”) Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants or tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest 100% of their assets in short-term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided, however, that the AAA-rated Money Market Mutual Funds’ investments in short term U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

30. In consultation with the Commission staff, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Fair Fund.

31. All interest earned will accrue for the benefit of the Fair Fund and all costs associated with the Escrow and Distribution Accounts.

32. Upon receipt of the monies from the Commission into the Escrow Account, the Distribution Agent will provide a signed receipt to the Commission staff within ten (10) business days. The Commission staff will file the receipt with the Court.

33. Upon transfer from the Commission, the assets of the Fair Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of Distribution Payments. All Distribution Payments via check will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

34. The Distribution Agent will provide copies of the bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and will assist the Tax Administrator in obtaining any other statements, as necessary.

## **V. Distribution**

35. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of this Distribution Plan. An Eligible Claimant’s Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Appendix 1 to this Distribution Plan, will be used to determine the amount of their Distribution Payment.

36. The Distribution Agent will disburse the Net Fair Fund to all Eligible Claimants, in one or more tranches, once all Claim Forms have been processed and all Potential Claimants whose claims have been denied or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth herein. No distribution will be conducted without prior authorization by an Order of the Court.

37. Within seventy-five (75) days following the date the Distribution Agent has mailed the Final Determination Notices, the Distribution Agent will prepare a list of all Eligible Claimants, the Eligible Loss Amount, and the Distribution Payment of each Eligible Claimant (“Payment File”). This Payment File shall be accompanied by a reasonable assurances letter as to the completeness and accuracy of the Payment File. The Distribution Agent will also prepare the relevant materials to effect a distribution, including recommending an estimated distributable amount from the Net Fair Fund. The Distribution Agent will retain a prudent reserve to pay any federal, state or local taxes payable in connection with the Fair Fund.

38. After receipt and acceptance of the Payment File, the Commission staff will petition the Court for authority to disburse the entire balance of the Net Fair Fund from the Commission to the Distribution Agent for distribution to Eligible Claimants pursuant to the Distribution Plan. In conjunction with any motion seeking approval of a distribution, the Payment File will, upon request, be made available to the Court under seal.

39. Following the Court’s approval of the Commission’s petition for the authority to distribute the Net Fair Fund to Eligible Claimants as provided for in this Distribution Plan, the Distribution Agent will commence the distribution to Eligible Claimants as promptly as possible following the transfer of funds.

40. Should the total amount of the Eligible Loss Amounts of all Eligible Claimants exceed the Net Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. This formula will be the fraction of the Eligible Loss Amount of each Eligible Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants.

41. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds the *de minimis* amount of \$10.00.

42. The Distribution Agent in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a Person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payments amounts.

43. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this Check-Cashing Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below. Where an Eligible Claimant's check is not negotiated within the Check-Cashing Period and has been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Net Fair Fund.

44. Payments to Eligible Claimants will be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued;
- c. A statement that reissued checks will expire on the later of ninety (90) days from the date of the original check or sixty (60) days from the date of the reissued check;
- d. A statement that the tax treatment of the distribution is the responsibility of the Eligible Claimant and that the Eligible Claimant should consult his, her, or its tax advisor for advice regarding the tax treatment of the distribution; and
- e. Contact information for the Distribution Agent for questions regarding the Distribution Payment.

45. Distribution Payments and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of their investment in Eligible Securities. Any such communication, letter or other mailing to Eligible Claimants characterizing the distribution will be submitted to the Commission staff and the Tax Administrator for review and approval.

46. Under no circumstances will the Distribution Agent, its employees or its agents incur any liability to any Person for making a distribution in accordance with the Order of the

Court approving the distribution and the schedules of Eligible Claimants, and all Persons shall be enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a Distribution Payment from the Fair Fund, such Eligible Claimant will 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 Fair Fund, and shall be barred from prosecuting or asserting any such claims.

## **VI. Post Distribution**

### **A. Handling of Returned or Uncashed Checks**

47. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void at the later of ninety (90) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a replacement check be reissued after ninety (90) days from the date of original issuance.

48. The Distribution Agent will research and attempt to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Claimant has the burden of providing the Distribution Agent with any changes to his, her, or its mailing address. The Distribution Agent will mail a reissued check to the updated address, subject to the time limits detailed herein.

49. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If such change is properly documented, in the sole discretion of the Distribution Agent, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.

50. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed Distribution Payments over \$100 (other than

those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

**A. Disposition of Remaining Funds**

51. If, after the distribution is complete, all tax obligations of the Fair Fund have been satisfied, and funds remain in the Net Fair Fund, the Commission staff, in consultation with the Distribution Agent, will return to the remaining funds to the Commission for transfer to the United States Treasury.

**VII. The Distribution Agent**

52. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Distribution Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Net Fair Fund in accordance with this Distribution Plan.

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

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

55. The Distribution Agent is authorized to enter into agreements with institutions

(“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided 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.

56. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties). Copies of invoices will be provided to the Commission staff on a monthly basis. All payments to the Distribution Agent will be paid from the Fair Fund after review by Commission staff.

57. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Fair Fund.

58. The Distribution Agent will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. 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 Fair Fund six (6) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Distribution Agent determines with the concurrence of the Commission staff.

### **VIII. Tax Compliance**

59. The Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations. 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, including, but not limited to:

- a. Obtaining a taxpayer identification number;
- b. Submitting requests for funds from the Fair Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and
- c. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Fair Fund.

60. When the Fair Fund is transferred to the Escrow Account for distribution, the Distribution Agent will tender to the Tax Administrator funds necessary to pay taxes upon the request of the Tax Administrator. The Commission will approve and arrange payment of the tax obligations without further approval of the Court, pursuant to the Order to Appoint a Tax Administrator, issued by the Court on September 27, 2016.

61. All fees, costs and expenses of the Tax Administrator will be paid by the Fair Fund as part of the cost of the administration of the Fair Fund. Any taxes on interest earned by the Fair Fund will be paid by the Fair Fund.

#### **IX. Fair Fund Reporting and Accounting**

62. The Distribution Agent will provide to Commission staff, who will file with the Court, a quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and will provide additional reports and quarterly account statements within thirty (30) days after the end of every quarter thereafter as detailed below.

63. Once the money has been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Distribution Agent.

64. The status report and quarterly account statement will inform the Court and the Commission staff of the activities and status of the Fair Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:

- a. The location of the account(s) comprising the Fair Fund; and
- b. An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.

65. The Distribution Agent will prepare a final report and final accounting, in a format to be provided by the Commission staff, when the Fair Fund administration is complete. In compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. The Commission staff will file the final report and final accounting with the Court.

66. Commission staff, or other relevant party, shall provide the Distribution Agent with any and all account information relating to the Fair Fund that may be required to meet reporting obligations; including providing copies of any account statements that the Distribution Agent may request.

#### **X. Termination of the Fair Fund**

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

68. The Fair 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 report and final accounting has been submitted to and approved by the Court;
- b. All taxes, fees and expenses have been paid; and
- c. All remaining funds have been transferred to the Commission.

69. Once the Fair Fund has been terminated, no further claims will be allowed and no additional Distribution Payments will be made whatsoever.

## **XI. Limitation of Liability**

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

71. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in connection with the Distribution Plan and all Potential Claimants and Class Action Authorized Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Distribution Plan.

72. The submission of the Claim Form or Release Form and the receipt and acceptance of a distribution by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other than the Distribution Agent), including, without limitation, the Defendants and the Defendant's past or present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.

## APPENDIX 1 – Plan of Allocation

If approved by the Court, the plan of allocation set forth below (the “Plan of Allocation”) will determine how the net proceeds of the Fair Fund will be distributed to Eligible Claimants who submit timely and valid Proof of Claim and Release forms (“Claim Forms”).

### Plan of Allocation

1. For Eligible Securities that were:

- a) *Purchased from April 1, 2003 through and including December 15, 2008*, the Eligible Loss per share is calculated as follows:
  - i. For shares sold from April 1, 2003 through and including December 15, 2008, Eligible Loss per share is \$0.00.
  - ii. For shares sold from December 16, 2008 through and including January 6, 2009, Eligible Loss per share is the lesser of 1) \$5.01; or 2) purchase price minus sale price.
  - iii. For shares sold from January 7, 2009 through and including April 6, 2009, the Eligible Loss per share is the lesser of 1) \$12.22; or 2) purchase price minus sale price.
  - iv. For shares held as of the close of trading on April 6, 2009, Eligible Loss per share is the lesser of 1) \$12.22; or 2) purchase price minus \$1.67.
- b) *Purchased from December 16, 2008 through and including January 6, 2009*, the Eligible Loss per share is calculated as follows:
  - i. For shares sold from December 16, 2008 through and including January 6, 2009, Eligible Loss per share is \$0.00.
  - ii. For shares sold from January 7, 2009 through and including April 6, 2009, the Eligible Loss per share is the lesser of 1) \$7.21; or 2) purchase price minus sale price.
  - iii. For shares held as of the close of trading on April 6, 2009, Eligible Loss per share is the lesser of 1) \$12.22; or 2) purchase price minus \$1.67.

2. FIFO Methodology: For each investor who held Eligible Securities as of the beginning of the Relevant Period and/or made multiple purchases or sales during the Relevant Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases, and sales to match purchases to sales for purposes of calculating Eligible Loss per share.

3. Short Sales and Options: In the event that a claimant has an opening short position in Eligible Securities, the earliest Relevant Period purchases or acquisitions shall be matched against such opening short position, and not entitled to a recovery and will not contribute to a market gain or loss, until that short position is fully covered. Any gains from short selling shall offset any losses on other transactions. Any losses from short selling will have an Eligible Loss (or Gain) per Share of \$0.00. If the opening short position is not fully covered by purchases during the Relevant Period, the Eligible Loss Amount for the claim is \$0.00. The date of a short sale is

deemed to be the date of sale of Eligible Securities. The date of covering a short sale is deemed to be the date of purchase or acquisition of the Eligible Securities. Option contracts will not be valued.

4. The Eligible Loss Amount shall be determined by summing the Eligible Loss Amount per share across all Eligible Securities bought and i) subsequently sold during the Relevant Period, or ii) held through the end of the Relevant Period. Negative Eligible Loss Amounts per share, or gains, will offset Eligible Loss Amounts. If the Eligible Loss Amount calculated is less than zero, the Eligible Loss Amount will be \$0.00.

5. An Eligible Claimant's Eligible Loss Amount will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Amended Complaint in this case that was received from another source (e.g. class action settlement), to the extent known by the Distribution Agent.

6. Pro Rata Share: Distribution Payments to Eligible Claimants will reflect their pro rata share of the Net Available Fund. An Eligible Claimant's pro rata share will be his, her or its Eligible Loss Amount divided by the total of all Eligible Claimants' Eligible Loss Amounts and then multiplied by the total amount in the Net Fair Fund. An Eligible Claimant will be eligible to receive a Distribution Payment not to exceed the Eligible Loss Amount.

7. Market Loss Limitation: If the Eligible Claimant had a market gain from the total of all transactions in Eligible Securities during the Relevant Period, the value of the Eligible Loss Amount will be zero. To the extent an Eligible Claimant suffered an overall market loss on his, her or its overall transactions in Eligible Securities during the Relevant Period, but that market loss was less than the Eligible Loss Amount calculated above, then the Claimant's Eligible Loss Amount shall be limited to the amount of the Action market loss. The Distribution Agent shall determine the claimant's market gain or loss with respect to his, her, or its overall transactions in Eligible Securities during the Relevant Period as the difference between (i) the Total Purchase Amount of such shares<sup>3</sup> and (ii) the sum of the Total Sales Proceeds<sup>4</sup> plus Total Holding Value of such shares.<sup>5</sup>

8. *De Minimis*: Claims resulting in a Distribution Payment of less than the Distribution *De Minimis* Amount of \$10.00 will not be paid but rather be returned to the Net Fair Fund for distribution to Eligible Claimants whose Distribution Amounts exceed the *De Minimis* Amount.

### **Plans and Procedures**

9. All prices mentioned in the calculation of Eligible Loss Amount exclude all fees and commissions. Purchases or acquisitions and sales of Eligible Securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

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<sup>3</sup> The "Total Purchase Amount" is the total amount the claimant paid, excluding commissions and other charges.

<sup>4</sup> The Distribution Agent shall match any sales of shares, first against the claimant's opening position and the proceeds of those sales will not be considered for purposes of calculating market gains or losses. The total amount received, excluding commissions and other charges, for the remaining sales shall be the "Total Sales Proceeds."

<sup>5</sup> Shares still held as of the close of trading on April 6, 2009 shall be ascribed a value of \$1.67 per share.

10. 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 claims of Potential Claimants and make determinations under the criteria established herein as to the eligibility of each Potential Claimant to recover monies and the amount of money to be distributed from the Fair Fund to each Eligible Claimant.

11. Any claim asserted by a Potential Claimant shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence that the Distribution Agent deems necessary or appropriate including, but not limited to, available account statements and trade confirmations.

12. All claims must be verified on the basis of a signed Claim Form executed by the Potential Claimant or its representative under the penalty of perjury under the laws of the United States.

13. The receipt of Eligible Securities on Eligible Purchase Dates by gift, inheritance, devise, or operation of law shall not be deemed to be a purchase of Eligible Securities on the Eligible Purchase Dates, nor shall it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in the instrument of gift or assignment. However, the recipient of Eligible Securities as a gift, inheritance, devise or operation of law shall be eligible to file a Proof of Claim Form and participate in the distribution of the Fair Fund to the extent the particular donor or decedent as the actual purchaser of Eligible Securities would have been eligible. However, the donee and the donor may not both make a claim with regard to the same Eligible Securities. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

14. 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 a written request and documentation, which the Distribution Agent in its sole discretion deems appropriate to substantiate the request.

15. To carry out the purposes of this Plan, the Distribution Agent is authorized to make such adjustments consistent with the purposes of the Distribution Plan as may be agreed upon between the Distribution Agent and the Commission and approved by the Court.