

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**A CHICAGO CONVENTION CENTER, LLC,
et al.**

Defendants.

Civil No. 13-cv-00982

Hon. Amy J. St. Eve

DISTRIBUTION PLAN

I. Introduction

1. This distribution plan (the “Plan”) is intended to distribute funds collected from Anshoo R. Sethi (“Sethi”), A Chicago Convention Center (“ACCC”), and Intercontinental Regional Center Trust of Chicago (“IRCTC”) (collectively, the “Defendants”) to partially compensate investors defrauded by the Defendants in connection with an investment that was misrepresented to enhance investors’ prospects for U.S. citizenship through the EB-5 Immigrant Investor Pilot Program¹ (the “EB-5 Program”). The method of calculation for distribution of the funds described in the Plan is intended to fairly and reasonably achieve this purpose.

II. Background

2. On February 6, 2013, the Securities and Exchange Commission (the “SEC”) filed a Complaint alleging that the Defendants perpetrated an investment scheme to exploit the EB-5 Program as a means to defraud investors seeking monetary returns and a legal path to U.S. residency. Under the terms of the fraudulent offering, investors wired \$500,000 apiece from their overseas banking accounts to U.S. based escrow accounts administered by SunTrust Bank

¹ The EB-5 Program provides foreign investors an avenue to U.S. residency by investing in domestic projects that will create or preserve a minimum number of jobs for U.S. workers.

(“SunTrust”). Ultimately, the Defendants fraudulently sold more than \$145 million in securities and collected over \$11.5 million in administrative fees from more than 250 investors (the “Investors”) primarily located in China. Dkt. No. 3.

3. Simultaneous with the filing of the Complaint, the SEC successfully sought a temporary restraining order, asset freeze, and other emergency relief against the Defendants. Dkt. Nos. 7, 13, and 14. On February 20, 2013, the Court entered a preliminary injunction and asset freeze that, in relevant part, froze all funds and other assets of Defendants (the “Asset Freeze”). Dkt. No. 27.

4. Pursuant to the Asset Freeze, over \$147.1 million in investment proceeds were frozen in SunTrust escrow accounts in the United States. *See* Dkt. No. 71. On April 19, 2013, upon the motion of the SEC, the Court modified the Asset Freeze to permit SunTrust to return to the Investors “all Subscription Proceeds” received from the Investors (the “April 19 Order”). Dkt. No. 71. Pursuant to the April 19 Order, SunTrust returned \$147,105,946.03 to the Investors, thereby returning to each Investor the entirety of their Investment,² and in a handful of cases, some or all Administrative Fees paid. More than \$11.5 million in Administrative Fees paid by the Investors remain uncompensated.

5. On March 17, 2014, the Court entered a Final Judgment against the Defendants (the “Final Judgment”). Dkt. No. 188. The Court ordered the Defendants, jointly and severally, to pay disgorgement and prejudgment interest of \$11,693,314.74. In addition, Defendants ACCC and IRCTC were each ordered to pay a civil penalty of \$1,450,000.00, and Defendant Sethi was ordered to pay a civil penalty of \$1,000,000.00. The Final Judgment provides that the SEC may propose a plan to distribute the monetary relief collected, and that such a plan may provide that distribution shall be “pursuant to the Fair Fund provisions of Section 308(a) of the

² Defined below, ¶ 11g.

Sarbanes Oxley Act of 2002.” Dkt. No. 188, pp.7-8. Of the over \$15.5 million ordered by the Court in disgorgement, prejudgment interest, and civil penalties, the Defendants have collectively paid approximately \$1.47 million to the SEC.

III. The Distribution Fund and its Administration

6. The SEC currently holds \$1,468,718.80 in an interest-bearing account at the United States Treasury’s Bureau of the Fiscal Services (“BFS”). The “Distribution Fund,” as used herein, is comprised of all funds in the BFS account, including accrued interest.

7. By Order entered December 7, 2016, the Court appointed Miller Kaplan Arase LLP as the Tax Administrator to fulfill the tax obligations of the Distribution Fund and authorized the SEC to pay tax obligations and tax administration fees and expenses from the Distribution Fund without further Order of the Court. Dkt. No. 210.

8. The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

9. On January 13, 2018, the Court appointed Analytics Consulting LLC to serve as the distribution agent of the Distribution Fund (the “Distribution Agent”), pursuant to the terms of a distribution plan to be approved by the Court. Dkt. No. 216.

10. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance. Further, the Distribution Agent will cooperate with the Tax Administrator for purposes of timely and accurately fulfilling the information reporting and withholding obligations of the Distribution Fund in compliance with IRS regulations, including but not limited to the Foreign Account Tax Compliance Act.

IV. Definitions

11. As used in the Plan, the following definitions shall apply:

- a. “Administrative Fee” is defined as the \$41,500.00 administrative fee charged in connection with an Investment.
- b. “Administrative Fee Offset” is defined as the amount in excess of the Investment returned to the Investor by SunTrust or otherwise. For instance, if SunTrust returned \$501,000.00 to an Investor that made only one Investment, the Administrative Fee Offset would be \$1,000.00.
- c. “*De Minimis* Amount” is defined as \$10.00. No Distribution Payments less than \$10.00 will be made; rather, the Investor to whom such payment would be made will be deemed ineligible for a distribution under the Plan and the allocated distribution amount will be distributed *pro rata* to Eligible Investors.
- d. “Determination Notice” means the Distribution Agent’s written reply to each Investor who timely submits a dispute, as described below in ¶ 22. The Determination Notice will constitute the Distribution Agent’s final ruling regarding the Investor’s Dispute.
- e. “Distribution Payment” is the amount of the Net Distribution Fund to be paid to each Eligible Investor as calculated in accordance with the Plan. In the Distribution Agent’s discretion, multiple Distribution Payments directed to the same Investor may be aggregated into one Distribution Payment.
- f. “Eligible Investor” is an Investor who is not an Unresponsive Investor, a Defendant, or an entity currently or formerly controlled by a Defendant; who has suffered a Net Loss as defined in the Plan; and whose Distribution Payment is greater than or equal to the *De Minimis* Amount.

g. “Investment” is defined as each investment of \$500,000.00 in ACCC.

One Investor may have had multiple Investments. It is an assumption of the Plan that all Investments have been returned to Investors by SunTrust.

h. “Investor” is defined as an individual or entity that made one or more Investment(s). The Distribution Agent has identified approximately 260 Investors from records provided to the SEC in connection with the investigation and litigation of this action, including the records provided by SunTrust in connection with its return of the Investments to Investors (the “SEC Records”).

i. “Net Distribution Fund” means the Distribution Fund less Plan Costs. Prior to distribution, the Distribution Agent, in consultation with the SEC staff and the Tax Administrator, shall establish a reserve sufficient to pay all Plan Costs. The Net Distribution Fund shall be the difference between the Distribution Fund and the reserve.

j. “Net Loss Amount” is defined as the difference between Administrative Fees paid by the Investor and the Administrative Fee Offset.

k. “Plan Costs” means all costs associated with the Distribution Fund and the administration of the Plan, including without limitation taxes, investment fees, bank account costs and expenses, Distribution Agent fees and expenses, and Tax Administrator fees and expenses. All Plan Costs will be paid from the Distribution Fund after review and approval by the SEC staff and without further Order of the Court.

l. “Plan Notice” means a written notice from the Distribution Agent to each Investor, as further described below, ¶ 18.

m. “*Pro Rata Ratio*” is a calculation of each Eligible Investor’s Net Loss Amount as a fraction of aggregate Net Loss Amounts. Interim calculations of the *Pro Rata Ratio*

may change until the Distribution Agent has identified all Eligible Investors and their Net Loss Amounts.

n. “Unresponsive Investor” means any Investor who the Distribution Agent cannot locate or who has not timely responded to information request(s) by the Distribution Agent, as further described below, ¶¶ 18-20.

V. No Claims Process

12. A claims process to identify Investors is unnecessary because the Distribution Agent has identified Investors from the SEC Records.

VI. Methodology

13. The Distribution Agent, working with the SEC staff, will distribute the Net Distribution Fund to Eligible Investors in proportion to their Net Loss Amount as follows:

a. Using the SEC Records and any additional documents obtained in response to the Plan Notice, the Distribution Agent will first determine that an Investor is ineligible for a distribution under the Plan if the Investor is either (i) an Unresponsive Investor, (ii) a Defendant, or (iii) an entity determined by the Distribution Agent in consultation with the SEC staff to be currently or formerly controlled by a Defendant. All remaining Investors will be included on List A as *preliminarily determined* Eligible Investors.

b. Using the SEC Records, the Distribution Agent will calculate for each Investor on List A, the Investor’s tentative Distribution Payment by multiplying that Investor’s *Pro Rata* Ratio by the Net Distribution Fund. If an Investor’s Distribution Payment is less than \$10.00, then that Investor will be deemed ineligible under the Plan, and the Investor’s Distribution Payment will remain in the Net Distribution Fund for distribution to Eligible

Investors. All remaining Investors will be included on List B as *preliminarily determined* Eligible Investors.

c. The Distribution Agent may repeat some or, all of steps (a) and (b) until the Distribution Agent has made a final determination of eligibility under the Plan. Finally determined Eligible Investors will receive a Distribution Payment under the Plan.

VII. Internet and Telephonic Resources for Investors

14. The Distribution Agent will establish and maintain a website devoted solely to the Distribution Fund (the “Distribution Fund Website”) in both English and Chinese. The Distribution Fund Website will make available in both English and Chinese a copy of the Plan Notice and Plan, as approved by the Court. The Distribution Fund Website will also include such other information covering the process or substance that the Distribution Agent believes will be beneficial to Investors. The SEC staff retains the right to review and approve any material posted on the Distribution Fund Website.

15. The SEC staff will post a copy of the Plan and Plan Notice (with Chinese translations) on the Information for Harmed Investors page (the “Harmed Investor Website”)³ on the SEC’s public website, www.sec.gov, and establish a link to the Distribution Fund Website.

16. The Distribution Agent will establish and maintain a toll-free telephone number for Investors to call to speak to a live representative in either English or Chinese during its regular business hours, 8:00 am to 5:00 pm, Pacific Standard Time, or outside of such hours, to hear pre-recorded information about the Distribution Fund, with the option of hearing that information in English or Chinese. The Distribution Agent will advise the SEC staff of the toll-free telephone number. The Distribution Agent will also establish and maintain a traditional

³ The Harmed Investors Website is located at <https://www.sec.gov/divisions/enforce/claims.htm>.

mailing address and an email address to enable Investors to correspond with the Distribution Agent.

17. Translations in additional languages of any information described herein as available to Investors may be made available at the discretion of the Distribution Agent, in consultation with the SEC staff, upon request made to the Distribution Agent.

VIII. Plan Notice

18. Within twenty-one (21) days of the approval of the Plan by the Court, the Distribution Agent will mail to each Investor a Plan Notice, acceptable to the SEC staff, in English and Chinese that contains (a) a characterization of the distribution; (b) a link to the approved Plan in English and Chinese posted on the Distribution Fund Website and instructions for how to request a copy of or download the Plan; (c) a preliminary determination of the Investor's eligibility for a distribution under the Plan, including a reason for any determination of ineligibility; (d) a preliminary calculation of the Investor's Administrative Fee Offset and Net Loss Amount; (e) instructions for submitting to the Distribution Agent any dispute as to the preliminary calculation of the Investor's Administrative Fee Offset or Net Loss Amount; (f) identification of any information required by the Distribution Agent or the Tax Administrator in order to make a distribution to the Investor, including but not limited to solicitation of valid Forms W-9 or W-8 (or conforming substitutes), as applicable; and (g) contact information for the Distribution Agent so Investors may contact the Distribution Agent with questions regarding the distribution.

19. The Distribution Agent will attempt to locate any Investor whose Plan Notice is returned or otherwise identified as not delivered and will document all such efforts. The Distribution Agent will utilize all means reasonably available, including Advanced Investor

Location services and CLEAR, to locate Investors and to obtain updated addresses in response to undeliverable notices. These efforts will constitute “reasonable efforts” under the Plan. Within thirty (30) days of receipt of the returned Plan Notice and/or ascertaining that the Plan Notice was not delivered, the Distribution Agent will resend the Plan Notice to the Investor’s new address, if one is found. If the Plan Notice is returned or again not delivered, and the Distribution Agent, despite reasonable efforts, is unable to find an Investor’s correct address, the Distribution Agent, after consultation with the SEC staff, may determine that Investor to be an Unresponsive Investor ineligible for a distribution under the Plan and any preliminarily allocated distribution amount will be distributed *pro rata* to Eligible Investors.

20. If an Investor fails to timely respond to the Distribution Agent’s request for information in the Plan Notice or otherwise, the Distribution Agent will then make no fewer than two (2) attempts to contact the Investor by mail, phone, and/or email. The second attempt will in no event take place more than sixty (60) days from the date of the Plan Notice. If an Investor fails to respond to the Distribution Agent’s contact attempts as described in this paragraph, the Distribution Agent, after consultation with the SEC staff, may determine that Investor to be an Unresponsive Investor ineligible for a distribution under the Plan and any preliminarily allocated distribution amount will be distributed *pro rata* to Eligible Investors.

21. Within forty-five (45) days after the date of the Plan Notice, any person who does not receive a Plan Notice, and believes that he, she, or it should have after becoming aware of the Plan (e.g., through other investors or on the Distribution Fund Website), must submit documentation to the Distribution Agent showing the person to be an Investor. Any such submission must be postmarked or, if not sent by U.S. Mail, received by the Distribution Agent no later than forty-five (45) days from the date of the Plan Notice. The Distribution Agent will

send a Plan Notice within twenty-one (21) days of receiving such documentation if the Distribution Agent is able to confirm the person's status as an Investor.

IX. Dispute Procedures

22. Investors will be directed in the Plan Notice to submit any dispute directly to the Distribution Agent and not to contact the SEC, the Court, or the Clerk of the Court. The Distribution Agent will notify the SEC staff immediately upon receipt of any dispute so that such dispute may be addressed timely and efficiently. Investors will have forty-five (45) days from the date of the Plan Notice to submit a written communication detailing any dispute, along with any supporting documentation, to the Distribution Agent. Any such written communication along with supporting documentation must be postmarked or, if not sent by U.S. Mail, received by the Distribution Agent no later than forty-five (45) days from the date of the Plan Notice. The scope of any dispute will be limited to a preliminary determination of ineligibility and the preliminary calculation of the Investor's Administrative Fee Offset and Net Loss Amount as set forth in the Plan Notice. All disputes must set forth the case name and number captioned above (*SEC v. A Chicago Convention Center, LLC, et al.*, 13-cv-00982 (N.D. Ill.)), clearly state the dispute, if true, and include the following above the signature line:

If executed within the United States:

"I declare under penalty of perjury that the foregoing is true and correct.
Executed on _____, 2019."
[signature]

If executed outside of the United States:

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."
Executed on _____, 2019."
[signature]

Disputes must also include documentation sufficient for the Distribution Agent to determine the merits of the dispute. **Failure to timely submit a dispute in accordance with this paragraph will result in the waiver of any dispute.**

23. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation. Within thirty (30) days of receipt of the dispute, the Distribution Agent will send its Determination Notice to notify the Investor of its resolution of the dispute, which will be final. If no timely disputes are received, the Distribution Agent will promptly notify the SEC staff of the same.

X. Establishment of the Escrow and Distribution Accounts

24. Prior to disbursement of the Distribution Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank (“Bank”) not unacceptable to SEC staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by SEC staff. The Escrow Account will be established to receive the monies from the BFS account, which 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 Investors. The accounts shall be in the name of and bearing the Employer Identification Number of the Distribution Fund as custodian for the distributees of the Distribution Fund. The name of each account will be in the following form: “*SEC v. A Chicago Convention Center, LLC, 13-cv-00982 (N.D. Ill.)*, for the benefit of investors allocated a distribution from the Distribution Fund.”

25. 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 Investors and 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 money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the U.S. Government.

26. All interest earned will accrue for the benefit of the Distribution Fund and all costs associated with the Escrow Account and Distribution Account will be paid by the Distribution Fund as Plan Costs.

27. In consultation with SEC 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 Distribution Fund.

28. Upon transfer from the BFS account, the assets of the Distribution Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of checks. All Distribution Fund checks presented for payment or electronic transfers 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.

29. The Distribution Agent will provide copies of the bank and/or investment statements for 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.

XI. Distribution

30. The Distribution Agent shall determine the Net Distribution Fund, in consultation with the SEC staff and the Tax Administrator, by retaining a prudent reserve to pay Plan Costs.

31. The Net Distribution Fund will be distributed to Eligible Investors as provided under the terms of the Plan. The Distribution Agent shall commence the distribution to all Eligible Investors as promptly as possible following the transfer of the funds from the BFS account.

32. Within thirty (30) days of the date of the last Determination Notice, the Distribution Agent shall prepare a final payee list ("Payee List") that includes the name, address, and Distribution Payment of each finally determined Eligible Investor. The Distribution Agent will also provide a "Reasonable Assurance Letter" as to the completeness and accuracy of the Payee List.

33. Upon receipt and review of the Payee List and Reasonable Assurances Letter, the SEC staff will move the Court for an Order directing the SEC to disburse the Net Distribution Fund to the Escrow Account. The Distribution Agent shall then use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within ten (10) business days of the release of the funds into the Escrow Account (the "Initial Issue"). All efforts will be coordinated

to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

34. 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. Checks that are not negotiated on or before the stale date will be voided, and the issuing financial institution will be instructed to stop payment on those checks and no additional payment will be issued except as provided in ¶¶ 38-40 below.

35. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments on behalf of Eligible Investors. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff.

36. Payments to Eligible Investors will be preceded or accompanied by a communication in English and Chinese, approved by the SEC staff, which includes, as appropriate, a statement:

a. Characterizing the distribution, clearly indicating that the money is being distributed from a Distribution Fund established in an SEC action to compensate investors for harm suffered as a result of securities law violations;

b. Informing that checks will be void after ninety (90) days and cannot be reissued after one hundred twenty (120) days from the date of the Initial Issue and that reissued checks will expire forty-five (45) days from the date of the reissued check;

d. Informing that the tax treatment of the distribution is the responsibility of each Eligible Investor and that the Eligible Investor should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and

e. Providing contact information for the Distribution Agent for questions regarding the Distribution Payment.

37. If additional funds are collected or received subsequent to the Initial Issue, and/or if funds remain in the Net Distribution Fund after the Initial Issue, the Distribution Agent in its discretion and in consultation with the SEC staff, and without further Order of the Court, will make an assessment as to whether it is feasible and justifiable to attempt to distribute the remaining funds (“Additional Distribution”). Any Additional Distribution will be made pursuant to the Plan and will be limited to those Eligible Investors that negotiated the distribution checks issued in the immediately preceding distribution, or received electronic payments.

XII. Post Distribution: Returned and Uncashed Checks

38. The Distribution Agent shall reissue checks to Eligible Investors upon the receipt of a valid, written request from the Eligible Investor. Such reissued checks will be void after forty-five (45) days from the issuance and in no event will a check be reissued more than one hundred twenty days (120) days from the Initial Issue.

39. The Distribution Agent will work with the Bank to obtain information about uncashed checks, 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.

40. As soon as practicable, the Distribution Agent will perform an advanced address search for checks that are returned as undeliverable, using the resources described above, ¶ 19,

and will reissue such checks so long as the new address is received, and the check reissued within one hundred twenty (120) days after the Initial Issue. The Distribution Agent will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of SEC staff and will reissue such checks if necessary, within one hundred twenty (120) days after the Initial Issue.

41. A residual within the Distribution Fund will be established for any amounts remaining after all Distribution Payments have been disbursed. The residual may include, among other things, funds reserved for future taxes and for post distribution contingencies, Distribution Payments not cashed, delivered, and/or accepted upon delivery, and tax refunds.

XIII. Reporting, Accounting, and Termination

42. Beginning upon the transfer of the Net Distribution Fund from the BFS account to the Bank, the Distribution Agent will provide an accounting to the SEC staff within 20 days after the end of each calendar quarter on a standardized accounting form provided by the SEC staff. Upon completion of all distributions pursuant to the Plan, the Distribution Agent shall make arrangement for the payment of any outstanding Plan Costs, transfer all remaining funds to the SEC, and submit a final accounting to the SEC on the standardized accounting form provided by the SEC staff. In compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. The Distribution Agent also shall submit a final report to the SEC staff summarizing the distribution, including disbursed amounts, returned or non-negotiated payments, outreach efforts and costs, and final distribution statistics, and such other information requested by the SEC staff.

43. The Distribution Agent will retain all documents in paper and electronic form for a period of six (6) years after approval of the final accounting by the Court. The Distribution

Agent will shut down the Distribution Fund Website six (6) months after the closing of the Escrow Account and Distribution Account, or at such earlier time as the Distribution Agent determines with concurrence of the SEC staff.

44. The Distribution Fund shall be eligible for termination, and the Distribution Agent shall be discharged, after all of the following have occurred: (a) a final accounting, in an SEC standard accounting format provided by the SEC staff, has been submitted by the Distribution Agent and the Tax Administrator for approval and has been approved, by the Court; (b) all taxes, fees and expenses have been paid; and (c) any amount remaining in the Distribution Fund has been received by the SEC for transfer to Treasury. The SEC staff shall seek an order from the Court, as appropriate, approving the final accounting, terminating the Distribution Fund, discharging the Distribution Agent, and related relief.

XIV. Miscellaneous

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

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

47. 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 the Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under the Plan.

48. 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 SEC 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 Distribution Fund.

49. 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 SEC on behalf of the Distribution Fund, for a pecuniary loss to the Distribution Fund, for any action taken or omitted by the Distribution Agent in connection with the Plan and all Eligible Investors will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the administration of the Distribution Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under the Plan.

50. The Court retains exclusive jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to the Plan.