

United American Ventures, LLC (“UAV”) and Matthew A. Dies (“Dies”) and any future funds to be paid by Defendants to harmed investors submitted herewith (the “Distribution Plan”).

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 14, 2010, the Securities and Exchange Commission (“SEC” or “Commission”) filed an enforcement action against United American Ventures, LLC (“UAV”); its principals, Philip Lee David Jack Thomas (“Thomas”) and Eric J. Hollowell (“Hollowell”); its investor relations associate, Matthew A. Dies (“Dies”); Integra Investment Group, LLC (“Integra”); and, Anthony J. Oliva (collectively “Defendants”), and All American Capital Corp. as a relief defendant (“Relief Defendant”). On March 2, 2012, the Court entered a Final Judgment against Defendants and the Relief Defendant. In the Memorandum Opinion and Order contemporaneously entered with the Final Judgment, the Court found Hollowell, Thomas and UAV jointly and severally liable for disgorgement of \$8,652,942 and prejudgment interest of \$426,430; Integra and Oliva jointly and severally liable for disgorgement of \$248,039 and prejudgment interest of \$15,982; Dies liable for disgorgement of \$54,381 and prejudgment interest of \$2,861; and the Relief Defendant liable for disgorgement of \$592,529. Additionally, Hollowell and Thomas were ordered to pay civil penalties of \$1,000,000 each, Oliva was ordered to pay a \$130,000 civil penalty, and Dies was ordered to pay a \$54,382 civil penalty.

On July 12, 2012, UAV paid \$326,828.79 in disgorgement to the SEC pursuant to the Final Judgment. As a result of collections efforts, the Commission obtained an additional \$54,851.86 in disgorgement and interest from Dies, for a total of \$381,680.65 (the “Distribution Fund”). The Distribution Fund is currently on deposit at the United States Treasury’s Bureau of the Fiscal Service (“BFS”).

On June 23, 2016, the Court entered an Order appointing Analytics, LLC (“Analytics”) as Distribution Agent charged with facilitating the development of a distribution plan for the fund and to administer the plan.

II. LEGAL STANDARD FOR REVIEW

a. The Court May Give Significant Deference to the SEC’s Distribution Plan.

Nearly every plan to distribute funds obtained in SEC enforcement actions requires choices to be made regarding the allocation of funds among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, courts give the Commission significant discretion to design and set the parameters of a distribution plan. *See SEC v. Wang*, 944 F.2d 80 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989). The court’s review of a distribution plan focuses on whether the plan is fair and reasonable. *SEC v Fishbach*, 133 F.3d 170, 175 (2nd Cir. 1997); *See Official Comm. Of Unsec. Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006). (“[U]nless the consent decree specifically provides otherwise (,) once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.”), citing *Wang*, 944 F.2d at 85. For the reasons articulated below, the Commission believes that the Distribution Plan for the Distribution Fund constitutes a fair and reasonable allocation of the limited funds available and should be approved.

a. The Commission’s Proposed Distribution Plan Provides a Fair and Reasonable Allocation of the Distribution Fund.

The Commission’s principal goal in fashioning a distribution plan is to identify a methodology that would allocate the available funds fairly and reasonably, in a manner

proportional to the injury that investors suffered as a result of the actions of the Defendant.

In its Complaint, the Commission alleged that UAV raised at least \$10 million from approximately 100 investors in multiple states through the unregistered and fraudulent sale of so-called “convertible bonds” (the “UAV bonds”).

The Distribution Plan is designed to compensate purchasers of UAV Bonds during the Relevant Period,¹ because they were harmed by the Defendants’ misrepresentation and concealment of numerous facts. The proposed distribution methodology allocates the Distribution Fund amongst Eligible Claimants. An Eligible Claimant’s total Recognized Loss, as determined in accordance with the Plan of Allocation contained in Exhibit B to the Distribution Plan, will be used to determine the amount of their distribution payment. Should the total amount of the total Recognized Loss of all Eligible Claimants exceed the Net Available Fund, the Distribution Agent will distribute funds to the Eligible Claimants based on a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant’s *pro rata* share based upon each Eligible Claimant’s total Recognized Loss divided by the aggregate total Recognized Loss for all Eligible Claimants. In no event will an Eligible Claimant receive a Distribution Payment totaling more than his, her or its calculated harm, after taking into account other payments received.

III. CONCLUSION

The Commission believes that the Distribution Plan for the Distribution Fund should be approved as fair and reasonable. The proposed plan directs the Distribution Fund’s proceeds to investors who were harmed by the improper conduct alleged in the

¹ Capitalized terms are defined in the Distribution Plan.

Commission's underlying lawsuit. The plan reasonably and fairly allocates its funds in accordance with each Eligible Claimant's Eligible Loss Amount.

Copies of the Distribution Plan and accompanying Plan of Allocation are attached to this motion as Exhibit A and Exhibit B, respectively.

Dated: March 31, 2017

Respectfully Submitted,

s/Keshia W. Ellis

Keshia W. Ellis

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, a copy of the Plaintiff Securities and Exchange Commission's Motion to Approve Proposed Distribution Plan along with the Proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Keshia W. Ellis

Keshia W. Ellis

PLAN OF DISTRIBUTION FOR UAV DISTRIBUTION FUND

I. Introduction

1. On June 14, 2010, the Securities and Exchange Commission (“SEC” or “Commission”) filed a complaint against United American Ventures, LLC (“UAV”); its principals, Philip Lee David Jack Thomas (“Thomas”) and Eric J. Hollowell (“Hollowell”); its investor relations associate, Matthew A. Dies (“Dies”); Integra Investment Group, LLC (“Integra”); and, Anthony J. Oliva (collectively “Defendants”), and All American Capital Corp. as a relief defendant (“Relief Defendant”), alleging that from approximately July 25, 2007 through at least November 2009, UAV raised at least \$10 million from approximately 100 investors in multiple states through the unregistered and fraudulent sale of so-called “convertible bonds” (the “UAV bonds”). According to the complaint, the Defendants misrepresented and concealed numerous material facts in communications with investors. For example, the Defendants assured investors that UAV had a strong track record of profiting from medical-related investments and that investors would earn a guaranteed 25 percent annual return on the UAV bonds.

2. On March 2, 2012, the Court entered a Final Judgment against Defendants and Relief Defendant adopting the Memorandum Opinion and Order contemporaneously entered that found Hollowell, Thomas and UAV jointly and severally liable for disgorgement of \$8,652,942 and prejudgment interest of \$426,430; Integra and Oliva jointly and severally liable for disgorgement of \$248,039 and prejudgment interest of \$15,982; Dies liable for disgorgement of \$54,381 and prejudgment interest of \$2,861; and the Relief Defendant liable for disgorgement of \$592,529. Additionally, Hollowell and Thomas were ordered to pay civil penalties of

\$1,000,000 each, Oliva was ordered to pay a \$130,000 civil penalty, and Dies was ordered to pay a \$54,382 civil penalty.

3. On July 12, 2012, UAV paid \$326,828.79 in disgorgement to the SEC pursuant to the Final Judgment. As a result of collections efforts, the Commission obtained an additional \$54,851.86 in disgorgement and interest from Dies.

4. The disgorgement and interest amounts referenced in paragraph 4 are referred to herein as the “Distribution Fund.” The Distribution Fund is currently on deposit with the United States Treasury’s Bureau of the Fiscal Service (“BFS”). On May 31, 2016, Damasco & Associates LLP² was appointed to handle the tax obligations of the Distribution Fund. On June 23, 2016, Analytics Consulting, LLC (“Analytics”) was appointed as the Distribution Agent to assist in overseeing the administration of the Distribution Fund in consultation with Commission staff, pursuant to the terms of this Distribution Plan.

II. Definitions

5. As used herein, the following definitions shall apply:

- (a) **“Claim Deficiency Notice”** means the notice sent by the Distribution Agent to a Potentially Eligible Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason or reasons for the deficiency and the

² As of October 1, 2016, Damasco & Associates LLP became a part of Miller Kaplan Arase LLP. Other than a name change, their engagement with the SEC and their ability to carry out their appointment as the Tax Administrator for this matter has not changed.

opportunity to cure such deficiency. A Claim Deficiency Notice shall be provided no later than fifteen (15) days after the Filing Deadline.

- (b) **“Claims Determination Date”** shall mean the date on or before which the Distribution Agent is to reach its final determination concerning the validity and amount of each Potentially Eligible Claimant’s claim. Except as otherwise provided herein, the Claims Determination Date shall be no later than one hundred and eighty (180) days following the Filing Deadline.
- (c) **“Days”** shall mean calendar days, unless specified otherwise.
- (d) **“Determination Notice”** shall mean the notice sent by the Distribution Agent to everyone who files a Proof of Claim Form; the Determination Notices will be mailed after all Proof of Claim Forms have been processed and, where necessary, Potentially Eligible Claimants have been sent a Claim Deficiency Notice and given a chance to respond.
- (e) **“Distribution Agent”** shall mean Analytics, the Distribution Agent appointed by the Court to administer the distribution of the Distribution Fund.
- (f) **“Distribution Fund”** shall mean the funds totaling \$381,680.65 paid by UAV and collected from Dies together with any interest earned on those funds or any additions thereto as may be provided by future Court order or agreement in related cases or otherwise.

- (g) **“Distribution Payment”** shall mean the funds allocated to an Eligible Claimant pursuant to their Recognized Loss. The minimum amount for distribution payments shall be \$10.00.
- (h) **“Distribution Plan Notice”** shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the Distribution Fund and their obligation to file a Proof of Claim Form in order to participate. The Distribution Agent, in consultation with the staff of the Commission, shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan, and such notice shall include, at a minimum, a statement that the Distribution Fund relates to the UAV bonds, the means of obtaining a Notice Packet (including a Proof of Claim Form), instructions for submitting a Proof of Claim Form, and the Filing Deadline. The Distribution Plan Notice shall advise Potentially Eligible Claimants that by participating in the distribution of the Distribution Fund, they will not be releasing any rights or claims they may have against any party (other than with respect to the Distribution Agent), including but not limited to, any party’s past and present directors, officers, promoters, advisers, agents, affiliates, nominees, assigns, creditors, or controlled entities.
- (i) **“Eligible Claimants”** shall mean Persons who purchased the UAV bonds during the Relevant Period and whose Recognized Loss as per the Plan of

Allocation entitles them to a Distribution Payment. Excluded from the Eligible Claimants are:

- (i) Defendants, their current or former employees, affiliates, or controlled entities who served in such capacity during the Relevant Period, and their assigns, creditors, heirs, distributees, spouses, parents, and children;
- (ii) The Relief Defendant, its current or former directors, officers, or employees, who served in such capacity during the Relevant Period;
- (iii) Any defendant in any action brought by the Commission or any class action lawsuit related to the conduct described in the Commission's complaint in this action or any related Commission action (or any of his or her affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities) unless and until such defendant is found not liable in all such civil suits prior to the Filing Deadline, and proof of the finding(s) is included in such defendant's timely filed Proof of Claim Form;
- (iv) Any Person who, as of the Filing Deadline, has been the subject of criminal charges related to the violations alleged in the Commission's complaint in this action or any related Commission action (or any of his or her affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities)

unless and until such defendant is found not guilty in all such criminal actions prior to the Filing Deadline, and proof of the finding(s) is included in such defendant's timely filed Proof of Claim Form;

- (v) Any Person who assigned their right to obtain a recovery in the Commission's action against Defendants or Relief Defendant; 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; or
- (vi) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.
- (j) **"Filing Deadline"** shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant's Proof of Claim Form must be postmarked by with the Distribution Agent to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the Distribution Fund. Subject to certain extensions provided for in this Distribution Plan, the Filing Deadline shall be ninety (90) days from the date the Distribution Plan is approved by the Court.
- (k) **"Net Available Fund"** shall mean the Distribution Fund, plus accumulated interest and earnings thereon, less fees and costs of administering the Distribution Fund and implementing the Distribution

Plan, and less any taxes that may be assessed against the Distribution Fund.

- (l) **“Notice Packet”** shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Distribution Agent or to those Persons who request such materials. The Distribution Agent, in consultation with the staff of the Commission, shall prepare the Notice Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and the Proof of Claim Form.
- (m) **“Person”** shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company, or governmental entity. All nouns, pronouns, and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.
- (n) **“Plan of Allocation”** shall mean the methodology by which a Potentially Eligible Claimant’s Recognized Loss is calculated.
- (o) **“Potentially Eligible Claimants”** shall mean those Persons identified by the Distribution Agent as having possible claims to recover from the Net Available Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Net Available Fund under this Distribution Plan.
- (p) **“Proof of Claim Form”** shall mean the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this

Distribution Plan. The Proof of Claim Form will require, at a minimum, sufficient documentation reflecting any Potentially Eligible Claimant's purchases of UAV bonds during the Relevant Period and the tax identification number of the Potentially Eligible Claimant.

- (q) **“Recognized Loss”** shall mean the amount of loss an Eligible Claimant incurred through their investment in the UAV bonds during the Relevant Period calculated in accordance with the Plan of Allocation, as detailed in Appendix 1, attached hereto. An Eligible Claimant's Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the complaint in this case that was received from another source.
- (r) **“Relevant Period”** shall mean the period between July 25, 2007 and November 24, 2009 **“Tax Administrator”** shall mean Damasco & Associates LLP,³ the firm appointed by the Court on May 31, 2016.

III. Identification and Notice to Potentially Eligible Claimants

6. 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 Potentially Eligible Claimants and make determinations under the criteria established herein as to the eligibility of each Potentially Eligible Claimant to recover monies and the amount of money to be distributed from the Distribution Fund to each Eligible Claimant.

³ *Supra* fn. 2.

7. Within thirty (30) days following the entry by the Court of its order approving this Distribution Plan, the Distribution Agent shall:

- (a) Design a Notice Packet, which shall be submitted to Commission staff for review and approval;
- (b) Create a mailing and claims database, consisting of the existing information of the Potentially Eligible Claimants;
- (c) Run a National Change of Address search to retrieve updated addresses for all records in the new database, thereby ensuring updated mailing information for Potentially Eligible Claimants;
- (d) Mail by United States First Class Mail a Notice Packet to each Potentially Eligible Claimant known to the Distribution Agent;
- (e) Establish a website, www.uavdistributionfund.com, for the administration of the Distribution Fund from which each Potentially Eligible Claimant may request a Notice Packet by mail or download a copy of the Notice Packet and other relevant documents online;
- (f) Provide a copy of the Distribution Plan to the Commission and request that the Commission post them on the Information for Harmed Investors page of www.sec.gov and establish a link to the Distribution Fund's website; and
- (g) Establish a toll-free telephone number by which Potentially Eligible Claimants can obtain information about the Distribution Fund.

8. The Distribution Agent will commence mailing the Distribution Plan Notice to all Potentially Eligible Claimants known to the Distribution Agent within thirty (30) days following the entry by this Court of an Order approving the Distribution Plan. Each Distribution Plan Notice will notify the Potentially Eligible Claimant of the Distribution Fund, contain a brief description of the eligibility requirements, generally describe the Distribution Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Proof of Claim Form by request or from the Distribution Fund's website, and provide instructions for submitting a claim.

9. Any claim asserted by a Potentially Eligible Claimant shall be in writing and shall provide adequate documentary evidence to substantiate the claim.

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

11. 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.

12. To carry out the purposes of this Distribution 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 staff and approved by the Court.

13. The Distribution Agent shall supply a Notice Packet to any Potentially Eligible Claimant who so requests via mail, phone, or e-mail prior to the Filing Deadline, as set forth in the Distribution Plan Notice.

14. The Distribution Agent shall attempt to locate any Potentially Eligible Claimant whose Proof of Claim Form has been returned by the United States Postal Service (“USPS”) as undeliverable. The Distribution Agent shall immediately mail again any returned undelivered mail for which the USPS has provided a forwarding address.

15. Additionally, the Distribution Agent may engage a third-party search firm to conduct more rigorous searches for addresses of missing Potentially Eligible Claimants. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable, after consultation with the staff of the Commission.

IV. Review of Claims Process

16. The Distribution Agent shall review each Proof of Claim Form received to determine the eligibility of each Potentially Eligible Claimant to participate in the distribution of the Distribution Fund by reviewing the claim data supporting documentation (or lack thereof), verifying the claim, and calculating each Potentially Eligible Claimant’s Recognized Loss pursuant to the Plan of Allocation. Each Potentially Eligible Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

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

17. The Distribution Agent shall provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient. The Claim Deficiency Notice shall be provided to such affected claimants within fifteen (15) days after the Filing Deadline.

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

19. Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have thirty (30) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

20. A Potentially Eligible Claimant who has failed to file an appropriate Proof of Claim Form in a timely manner, or who has failed to cure a deficiency in a timely manner identified in a Claim Deficiency Notice, is not permitted to object to the barring or denial of his or her claim on the basis that:

- (a) The Distribution Agent failed to mail, or properly to mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Distribution Plan Notice, Notice Packet, or the relevant Determination Notice;
- (b) The Distribution Agent failed to properly record the receipt of an initial Proof of Claim Form, or a revised Proof of Claim Form to cure deficiencies, or the requisite supporting documentation; or

- (c) A Potentially Eligible Claimant's name and/or proper contact information was not properly recorded in the Distribution Agent's records. The Potentially Eligible Claimant has the burden of notifying the Distribution Agent of his or her current address and other contact information, and of ensuring that such information is properly recorded in the Distribution Agent's records.

21. On or before the Claims Determination Date, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a Proof of Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim. In the event a claim is denied, in whole or in part, the Distribution Agent will state the reason for such denial.

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

VI. Payment of Approved Claims

23. The Distribution Agent shall distribute the Net Available Fund to all Eligible Claimants only after all timely submitted Proof of Claim Forms have been processed and all Potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure, pursuant to the procedures set forth above.

24. Within fifteen (15) days following the Claims Determination Date, the Distribution Agent shall prepare a final payee list that includes the names of Eligible Claimants, the Recognized Loss of each Eligible Claimant, and the Distribution Payment amount. The

Distribution Agent shall provide the final payee list to the Commission staff, and upon review, the Commission staff shall petition the Court to transfer all funds from the Commission to the Distribution Agent for distribution pursuant to the Distribution Plan. In conjunction with the motion seeking transfer of the Net Available Fund from the Commission to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

25. Following the Court's approval of the Commission's petition for the authority to distribute the funds from the Net Available Fund to Eligible Claimants as provided for in this Distribution Plan, the Court may issue an order to transfer all funds in from the Commission representing the Distribution Fund, less any expenses, to the account or accounts established by the Distribution Agent in accordance with Paragraph 27 below. The Distribution Agent shall commence the distributions to all Eligible Claimants as promptly as possible following the transfer of the funds.

26. Upon receipt of the monies from the Commission in this matter, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account as described below:

- (a) The bank account will be maintained at a United States commercial bank (the "Bank"), to be proposed by the Distribution Agent and not unacceptable to the staff of the Commission.
- (b) The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to the staff of the Commission in this matter within ten (10) business days of receipt of the monies.

- (c) Pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the staff of the Commission, the Distribution Agent and the Bank shall establish an escrow account in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund (“QSF”), as custodian for the distributees of the Distribution Plan. The Distribution Agent and Bank shall also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linking checking and investment account) titled as set forth above for the purpose of funding checks to be distributed to investors by the Distribution Agent pursuant to the Distribution Plan.
- (d) During the term of the Escrow Agreement, if invested, the escrow account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, tax obligations and/or fees and expenses of the Tax Administrator and Distribution Agent, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short term United States Treasury securities and obligations, all backed by the full faith and credit of the United States Government.

- (e) 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.
- (f) In consultation with the staff of the Commission, 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 that will preserve earnings, if possible, without compromising safety and soundness by providing maximum protection for the Distribution Fund under the full faith and credit of the United States Government and/or the maximum available FDIC deposit insurance and pass-through deposit insurance.

27. If, after the Distribution Agent makes the distribution to Eligible Claimants, funds remain in the Distribution Fund in addition to tax reserves, those funds shall be paid to the Commission for transfer to the United States Treasury.

28. All Distribution Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before being honored by the Bank, and all such checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant’s check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Claimant’s claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the Distribution Fund.

29. The Distribution Agent shall use all reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.

30. All Distribution Payments shall be preceded or accompanied by a communication that includes, as appropriate:

- (a) A statement characterizing the distribution;
- (b) A statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- (c) A statement that checks will be void after ninety (90) days after the date of issuance; and,
- (d) The name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

31. Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. All Distribution Payments, on their face or the accompanying mailing, shall clearly indicate that the money is being distributed from a Distribution Fund established by the Commission to compensate investors for harm as a result of their investment in the UAV bonds.

32. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person in connection with a distribution made in accordance with the list of all Eligible Claimants and their Recognized Loss as approved by the Court, and all

Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Distribution Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

VII. Post-Distribution

33. The Distribution Agent shall reissue checks to Eligible Claimants, upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after sixty (60) days from issuance and in no event will a check be reissued after one hundred fifty (150) days after the original check was issued.

34. The Distribution Agent will perform an advanced address search for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within one hundred fifty (150) days after the original check was issued. Furthermore, the Distribution Agent will take additional steps, as necessary, to follow up on the status of uncashed checks at the request of Commission staff and will reissue such checks if necessary, within one hundred fifty (150) days after the original check was issued.

35. One hundred eighty (180) days following the distribution, all approved final fees and expenses shall be paid, all outstanding checks shall be voided, and any remaining funds shall be paid to the Commission for transfer to the United States Treasury upon receipt of written instructions by the Distribution Agent.

VIII. Wrap-Up and Wind Down of Distribution

36. The Distribution Agent will destroy all documents, including documents in any media, six (6) years after the transfer of any remaining funds to the Commission. In addition, the Distribution Agent will shut down the website established specifically for the administration of the Distribution Fund six (6) months after the transfer of any remaining funds to the Commission, or at an earlier date pursuant to the Commission staff's direction.

37. No further claims shall be made against the Distribution Fund beyond the amount allocated to Eligible Claimants. Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever.

38. Upon final distribution of the funds, the Distribution Agent shall make arrangement for the final payment of taxes and tax-related fees and shall submit a final accounting to the Court in a SEC standard accounting format provided by the staff of the Commission. The Distribution Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (a) the final accounting has been submitted and approved by the Court, (b) all taxes and fees have been paid, and (c) all remaining funds or any residual have been paid to the Commission for transfer to the United States Treasury.

IX. Responsibilities of the Tax Administrator

39. The Distribution Fund is a "Qualified Settlement Fund" within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of

Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Timely requests for funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable tax returns; and
- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Net Available Fund.

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

X. Payment of Costs, Fees, and Taxes, and Filing Report and Accountings

41. All taxes and the reasonable fees and expenses of the Tax Administrator, Distribution Agent, third-party professionals and service providers incurred in the performance of its duties, will be paid from the Distribution Fund on a quarterly basis, subject to the review and approval of the Court.

42. The Distribution Agent shall provide Commission staff, who shall file with the Court, a progress report, pursuant to and in a format to be provided by Commission staff, within forty-five (45) days of Court approval of this Distribution Plan, and shall provide additional reports within twenty (20) days after the end of every quarter thereafter, and a final report when its duties are completed.

43. The progress reports shall inform the Court and Commission staff of the activities and status of the Distribution Fund during the requested reporting period, and shall:

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

44. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, and a request for approval of any unpaid taxes.

45. The Clerk of the Court shall provide the Distribution Agent with any and all account information relating to funds held in the CRIS account that may be required for the progress and final reports, including providing copies of any account statements that the Distribution Agent may request.

XI. Other Rights and Powers

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

47. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the

Distribution Fund, provided that such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

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

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

APPENDIX I

Plan of Allocation

1. The amount available for distribution is \$374,959.60., less taxes and fees (“Net Available Fund”).
2. The Net Available Fund will be allocated to Eligible Claimants on a *pro rata* basis based on their Recognized Loss.
3. The Recognized Loss for each Eligible Claimant will be calculated as follows:
 - (a) The Distribution Agent will total the funds invested in the UAV bonds (“Principal Paid In”) for each claimant.
 - (b) The Distribution Agent then will subtract from this total amount all payments received under the guise of a return on the investment in UAV bonds. (“Interest Received”). The resulting total is the Eligible Claimant’s (“Recognized Loss”).
 - (c) The Distribution Agent next will add the Recognized Loss for each Eligible Claimant to get a total Recognized Loss invested for all Eligible Claimants combined.
 - (d) If the total Recognized Loss exceeds the Net Available Fund, the Distribution Agent will determine what percentage of the total Recognized Loss is represented by each Eligible Claimant’s Net Amount. The resulting percentage for each Eligible Claimant is the claimant’s *pro rata* share (“*Pro Rata Share*”);

- (e) The Distribution Agent will multiply the Net Available Fund by each Eligible Claimant's *Pro Rata* Share to determine their Distribution Payment.