

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

|                                       |   |                 |
|---------------------------------------|---|-----------------|
| SECURITIES AND EXCHANGE COMMISSION, ) | ) |                 |
|                                       | ) |                 |
| Plaintiff, )                          | ) |                 |
|                                       | ) |                 |
| v. )                                  | ) | No. 1:02CV324   |
|                                       | ) | (Judge Gaughan) |
| FRANK D. GRUTTADAURIA, et al., )      | ) |                 |
|                                       | ) |                 |
| Defendants. )                         | ) |                 |

**ORDER ON DISTRIBUTION PLAN AND  
APPOINTMENT OF DISTRIBUTION AGENT AND TAX ADMINISTRATOR**

This cause is before the Court on the Motion filed by the Plaintiff, Securities and Exchange Commission (“SEC” or the “Commission”), for the approval of a Distribution Plan, and the appointment of a Distribution Agent and Tax Administrator.

And the Court, having reviewed the Commission’s Motion and being duly advised in the premises:

**IT IS HEREBY ORDERED:**

**I. Distribution Plan**

The following Distribution Plan shall govern the management and distribution of the funds under this Court’s jurisdiction in this case (the “Distribution Fund”).

1. The Distribution Fund will be distributed by establishing tiers, the grouping of which will be based upon the account value(s) contained in the customers’ final falsified account statements. Within each tier, each account will receive the same compensation, regardless of the represented account value.

2. Upon Motion of the SEC, the Court, at its discretion, may approve both the threshold levels of the tiers and the amounts to be paid out within each tier based upon the final account information that former customers will be permitted to submit to the Distribution Agent and after the consideration of any objections to those account statements.
3. The amount distributed under this Distribution Plan will be the total funds remaining after the payment of taxes, fees, costs of distribution, and the creation of a reserve, the size of which will be determined by the Distribution Agent, in consultation with the Tax Administrator and SEC staff.
4. Within five (5) days of the entry of this Order, the Distribution Agent shall obtain the list of potential claimants from the SEC and begin its research regarding the addresses of the potential claimants to ensure that they are current. Should initial research not reveal the current location of the potential claimants, the Distribution Agent shall use its best efforts to locate the claimants within forty-five (45) days of the entry of this Order.
5. Within seventy-five (75) days of the entry of this Order, the Distribution Agent shall send a cover letter to be drafted by SEC staff and final account statements to be provided by SEC staff to prospective claimants.
6. Claimants shall have twenty days (20) from the date of the mailing of the cover letters and final account statements to file an objection to the account statement with the Distribution Agent.
7. SEC staff shall review objections and, within fifteen (15) days of receipt of the objection, shall mail the decision approving or denying the objection to the objecting claimant.

8. Claimants receiving denied objections shall have twenty (20) days from the date of the mailing of the denial to file a petition with the Court requesting review of their objection. Petitions to the Court shall be limited to five (5) pages.
9. The Court, at its discretion, may schedule a hearing on all outstanding objections on the same date.
10. Once the Court has ruled upon all objections, the SEC will file with the Court a final tier schedule, and dollar allocation between the tiers, along with a request to approve the distribution.
11. Upon the Court's approval of the distribution, the Distribution Fund held in the National City Bank account shall be transferred to the Distribution Agent.
12. The Distribution Agent shall issue checks to the claimants within fifteen (15) days of receipt of the Distribution Fund from the National City Bank account. Checks shall have a stale date of ninety (90) days.
13. After the payment of final taxes, costs, and expenses, along with any funds left from uncashed checks, the SEC shall make a motion to the Court regarding the disposition of any residual funds. The Court will make the determination as to the appropriate recipient(s) of any such funds.
14. The Distribution Agent shall file a final accounting with the Court on a form to be supplied by the Commission.
15. The Distribution Plan shall be subject to modification upon Motion by the Commission.

16. 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.

## **II. Appointment of Distribution Agent**

1. Rust Consulting, Inc. is hereby appointed as Distribution Agent with respect to the Distribution Fund.
2. The Distribution Agent shall be excused from any requirement to post a bond.
3. The Distribution Agent shall be entitled to reimbursement and compensation from the Distribution Fund for the reasonable costs, fees, and other expenses incurred in the performance of its duties, provided however that all such reimbursement and compensation requests must be approved by the Court upon motion before payment from the Distribution Fund may be made.
4. At the conclusion of each month, the SEC may apply for reimbursement and compensation for the fees and expenses incurred by the Distribution Agent during the month. The Distribution Agent shall provide the staff of the SEC with a copy of its reimbursement and compensation request, which shall include supporting documentation to justify the expenses or services rendered, and the detail of the charges on a form to be provided by SEC staff. Charges for services shall include: (a) the date of service; (b) the name or initials of the individual rendering the service; (c) a description of the service; (d) the hourly rate; (e) the time charged; and (f) the amount due for that service. The description of the service should be brief and informative. Expenses shall be supported by invoices.

5. Within twenty (20) days after the end of each calendar quarter, or as directed by the staff of the SEC, the Distribution Agent shall provide the SEC with an accounting of all assets in the fund to be distributed, in a format to be provided by the staff of the SEC. Such an accounting shall inform the SEC of the activities and status of the fund during the reporting period, and shall specify, at a minimum, the location of the account(s) comprising the fund, the value of those account(s), all monies earned or received into the account(s), monies distributed to claimants under the Distribution Plan, and any monies expended to satisfy fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.
6. 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 that it, in bad faith or in reckless disregard of their duties under this Distribution Plan, acted or failed to act.
7. The Distribution Agent is authorized to enter into agreements with financial institutions as may be appropriate or necessary in the administration of the distribution fund.
8. The Court shall retain 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.
9. Following the distribution of the funds in this matter in accordance with this Distribution Plan, the Court may, upon the filing of a request by the SEC on behalf of the

Distribution Agent, enter an Order discharging the Distribution Agent from any claims or liability in connection with the Distribution Plan and the administration of the funds, and enjoining all other parties from prosecuting or asserting any such discharged claim or liability against the Distribution Agent.

10. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. If the Distribution Agent decides to resign, it shall first give written notice to the staff of the SEC and the Court of such intention, and such resignation shall not be effective until the Court has appointed a successor. The Distribution Agent shall then follow such instructions as such successor or the Court gives it in turning over management of the Distribution Fund.

11. Upon final distribution of the funds, the Distribution Agent shall coordinate with the Tax Administrator to make the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the SEC for filing with the Court. The distribution shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (a) the Final Accounting by the Distribution Agent has been submitted and approved by the Court; (b) all taxes and fees have been paid; and (c) all remaining funds or any residual amounts have been disbursed pursuant to a motion by the SEC and a determination by the Court.

### **III. Appointment of Tax Administrator**

1. Damasco & Associates, LLP (“Damasco”) is hereby appointed as Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Distribution Fund under this Court’s jurisdiction in this case.

2. Damasco shall be designated the Tax Administrator of the Distribution Fund and shall satisfy the administrative requirements imposed by Internal Revenue Code and its accompanying regulations, including but not limited to (a) obtaining a taxpayer identification number, (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Distribution Fund, and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Distribution Fund. The Tax Administrator shall contemporaneously provide copies of all such filings to the staff of the Commission.

3. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Distribution Fund, request that the staff of the Commission file with the Court a motion, supported by the Tax Administrator's declaration of the amount of taxes due, to transfer funds from the Distribution Fund on deposit with the Court to pay any tax obligations of the Distribution Fund.

4. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the Commission. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a declaration of fees and expenses to the staff of the Commission for submission to the Court for approval and for payment from the Distribution Fund. No fees or expenses may be paid absent the Court's order.

5. At least ten (10) days before any motion to pay fees and expenses is filed with the Court, the Tax Administrator shall provide the staff of the Commission with a draft of the supporting declaration for review. If the Commission has any corrections or objections to

the declaration, the Tax Administrator and the staff of the Commission shall attempt to resolve them on a consensual basis. If a consensual resolution is not reached, the Commission may submit with the motion any objections along with the Tax Administrator's response thereto.

**IT IS SO ORDERED.**

Dated: 1/30/09

/s/ Patricia A. Gaughan  
United States District Judge  
Northern District of Ohio