

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

09 CV 10047 (PGG)

Plaintiff,

- against -

ROCKFORD FUNDING GROUP, LLC,

Defendant,

- and -

GENADI YAGODAYEV, BOOKMANN AGENCY, LLP,  
HOUSEBERG IMPEX INC., INFINITA PLUS TRADING, LTD.  
INTERCITY TRANSIT, LTD., MADISA LTD,  
MILTON BENEFITS, LLP, PACIFIC GAIN TECHNOLOGIES LTD.,  
ROCKFORD INDUSTRY, LTD., STAR TRADING, INC.,  
SUNRISE IMPORT & EXPORT INC., and TRASEKS, LTD.,

Relief Defendants.

**MOTION TO APPROVE PLAN OF DISTRIBUTION**

The plaintiff Securities and Exchange Commission (the “Commission”) respectfully represents:

**Introduction**

1. In this civil injunctive action, the Commission has, with one exception (the pending motion to dismiss by the relief defendants Star Trading, Inc. and Sunrise Import & Export Inc. (Dkt. No. 42) resolved all issues of liability and damages. To date, in excess of \$600,000 of ill-gotten gains has been recovered, and the Commission is seeking to repatriate approximately \$350,000 in additional funds held in the Hong Kong bank account of one of the relief defendants.

2. The Commission is seeking to distribute the funds recovered, and additional funds that may be recovered, to the injured investors pursuant to the Plan of Distribution contained herein.

### **Procedural History**

3. The Commission filed a complaint against the defendant Rockford Funding Group, LLC (“Rockford”) and various relief defendants on December 8, 2009. In its complaint (Dkt. No. 1), the Commission alleges that Rockford fraudulently used cold-calling and a Web site to raise at least \$11 million from more than 200 investors in 41 different states and Canada since March 2009. Rockford falsely touted itself as a leading private equity firm with an \$800 million pipeline of investments and many Fortune 500 companies as clients, and told investors their money would be safely invested in structured settlements in private lawsuits. Rockford, however, did not engage in any investment activity that would generate any returns for investors, let alone its claimed returns of at least 15 percent annually. Instead, dividend payments it made to investors were funded by other Rockford investors’ contributions, and Rockford transferred most of the money collected from investors to banks in Latvia and Hong Kong. In short, Rockford operated as a Ponzi scheme.

4. Based on these allegations, the Commission charged Rockford with violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. The Commission alleged that the relief defendants had received the proceeds of Rockford’s violations of the federal securities laws.

5. The Court has issued judgments against Rockford and most of the relief defendants, which hold Rockford and the relief defendants jointly and severally liable for a total of \$11,237,250.70 in disgorgement and prejudgment interest. (The judgment against Rockford also directs it to pay a civil money penalty of \$500,000.) Pursuant to these judgments, approximately \$600,000 has been paid to the Clerk of the Court, and it is currently being held in the Court Registry Investment Service (“CRIS”) fund. This amount consists of payments pursuant to the Court’s judgment against the relief defendant Pacific Gain Technologies Ltd. and funds transferred by various banks holding frozen accounts of Rockford and certain relief defendants.<sup>1</sup> The amounts held in the CRIS account constitute the “Distribution Fund.”

6. On June 28, 2011, the Court appointed Damasco & Associates, LLP, as Tax Administrator with respect to the Distribution Fund.

7. On August 1, 2014, per the Order to Appoint a Distribution Agent, the Court appointed Analytics LLC (“Analytics”) as the Distribution Agent for the Distribution Fund.

#### Defined Terms

8. As used herein, the following definitions shall apply:
- a. “Affiliate” shall have the meaning set forth in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101(2).
  - b. “Authorized Claimants” shall mean Potentially Eligible Claimants who submitted timely claims which were approved by the Distribution Agent for pro rata distribution per the Recognized Claim.
  - c. “Calculated Dividend Payments” shall be calculated as:

---

<sup>1</sup> The Commission expects that additional funds may be deposited in the CRIS from the Hong Kong account of Madisa (China) Limited in the near future. If deposited, these funds will become a portion of the Distribution Fund.

- i. Investments of \$249,999.99 or less at 1.25% monthly of their principal investment.
  - ii. Investments of \$250,000 to \$499,999.99 at 1.50% monthly of their principal investment.
  - iii. Investments of \$500,000 or greater at 1.75% monthly of their principal investment.
  - iv. Monthly shall be determined as full calendar month from date of investment to November 30, 2009.
- d. "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 opportunity to cure such deficiency. A Claim Deficiency Notice shall be provided no later than ninety (90) days after the Filing Deadline. Subject to certain extensions provided for in this Distribution Plan, the deadline to cure deficiencies shall be twenty (20) days from the date of the Claims Deficiency Notice.
- e. "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.
- f. "Days" shall mean calendar days, unless specified otherwise.

- g. “Determination Notice” shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant stating the Distribution Agent's determination of the validity of the Potentially Eligible Claimant's claim.
- h. “Distribution Agent” shall mean Analytics Consulting LLC (Analytics), the Distribution Agent appointed by the Court to assist with the administration and distribution of the Distribution Fund.
- i. “Distribution Fund” shall refer to the disgorgement and prejudgment interest paid by the Defendants and Relief Defendants or otherwise collected pursuant to the Court’s judgments in this case, plus any additions thereto as may be provided by future Court orders or agreements in related cases or otherwise.
- j. “Distribution Payment” shall mean the funds allocated to an Authorized Claimant pursuant to their Recognized Claim.
- k. “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 investments with Rockford Funding Group, LLC and/or Relief Defendants, the means of obtaining Notice Packets (including Proof of Claim Forms), instructions for submitting Proof of Claim Forms, 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.

- l. "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 filed 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 mailing of the Notice Packet.
- m. "Investment" shall mean the amount deposited with Rockford Funding Group, LLC and/or Relief Defendants from at least March 2009 to November 2009.
- n. "Net Available Fund" shall mean 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.
- o. "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 people 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.

- p. “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.
- q. “Plan of Allocation” shall mean the methodology by which a Potentially Eligible Claimant's Recognized Claim is calculated.
- r. “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.

Excluded from the Potentially Eligible Claimants are:

- i. Defendant, its current or former employees, Affiliates, or controlled entities who served in such capacity during at least March 2009 to November 2009, and their assigns, creditors, heirs, distributees, spouses, parents, and children;
- ii. The Relief Defendants, their current or former directors, officers, or employees, who served in such capacity during at least March 2009 to November 2009;
- 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.
- s. "Proof of Claim Form" shall mean the form designed by the Distribution Agent in accordance with the terms of this Distribution Plan for the filing of proof of a Potentially Eligible Claimant's claim, which form shall require, at a minimum, sufficient documentation reflecting the Potentially Eligible Claimant's Investment.

- t. “Recognized Claim” shall mean the Potentially Eligible Claimant's compensable amount pursuant to the Plan of Allocation.
- u. “Total Investment” shall mean the aggregate sum of money deposited with Rockford Funding Group, LLC and/or Relief Defendants from at least March 2009 to November 2009.
- v. “Well-Capitalized” shall have the same meaning as defined by the Federal Reserve Act Subpart D, 12 C.F.R. § 208.43.

**Plan of Allocation**

9. The Net Available Fund will be allocated to Authorized Claimants pro rata based on their Recognized Claim.

10. Recognized Claim will be calculated as Total Investment less Calculated Dividend Payments.

11. For example, the Recognized Claim of an investment of \$5,000 on April 6, 2009 would be calculated as Total Investment (\$5,000) less Calculated Dividend Payments (\$437.50) for a Recognized Claim of \$4,562.50.

12. If an Authorized Claimant made more than one Investment on different dates, the Calculated Dividend Payments will be calculated separately based on each date of investment, then aggregated and subtracted from the aggregated Total Investment in order to calculate the Recognized Claim.

**Plans and Procedures**

13. 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 Net Available Fund to each Authorized Claimant.

14. Any claim asserted by a Potentially Eligible 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.

15. 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.

16. The receipt of a Fixed Dividend Contract by gift, inheritance, devise, or operation of law shall not be deemed to disqualify the gift or as a Potentially Eligible Claimant. However, the recipient of a Fixed Dividend Contract 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 Distribution Fund to the extent the particular donor or decedent as the actual investor would have been eligible. However, the donee and the donor may not both make a claim with regard to the same Fixed Dividend Contract. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

17. To the extent that an Potentially Eligible Claimant, his or her representative, heir, or assign requests a distribution check to be issued or reissued in a different name than the Authorized 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.

18. 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 staff of the Commission and approved by the Court.

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

19. The Distribution Agent shall, insofar as is practicable, identify individual Potentially Eligible Claimants from a review of information provided by the Commission staff. The available information is believed to have identified all Potentially Eligible Claimants, however, if an unknown claimant can demonstrate they should be included as a Potentially Eligible Claimant to the satisfaction of the Distribution Agent and the Commission staff, the Distribution Agent is authorized to include the claim.

20. Within forty-five (45) 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 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 staff and request that the Commission staff post it on the Information for Harmed Investors page of [www.SEC.gov](http://www.SEC.gov) and establish a link to the Distribution Fund's website; and
- g. Establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the Distribution Fund.

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

22. 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.

23. 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 by the USPS without a current forwarding address will be conducted as necessary and economically reasonable, after consultation with the staff of the Commission.

#### **Review of Claims Process**

24. The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Recognized Claim, together with any additional conclusions of the Distribution Agent on other issues relevant to the

claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of his or her claim, and that it qualifies as an Authorized Claimant. The Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

25. To avoid being barred from asserting a claim, each Potentially Eligible Claimant must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all supporting documentation on or before the Filing Deadline. The Filing Deadline may be extended for one or more Potentially Eligible Claimants by the Distribution Agent in its sole discretion, in which event such extension shall constitute the Filing Deadline for such Potentially Eligible Claimants. Unless otherwise determined by the Distribution Agent in its sole discretion for good cause shown, any Potentially Eligible Claimant who does not file a properly completed and documented Proof of Claim Form, including the Potentially Eligible Claimant's Tax Identification Number, postmarked by (or received by the Distribution Agent if not sent by U.S. Mail) on or before the Filing Deadline, shall be barred from asserting a claim against the Distribution Agent or the Distribution Fund. The burden shall be upon the Potentially Eligible Claimant to ensure that his or her Proof of Claim Form has been properly and timely received by the Distribution Agent.

26. After the Distribution Agent has completed the process of analyzing the claims and determining the amounts to be distributed as provided in this Distribution Plan, and prior to the distribution of funds from the Net Available Fund, the Distribution Agent shall provide the Commission staff with the results of that review together with any written analysis or reports related to the review.

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

27. 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 ninety (90) days after the Filing Deadline.

28. 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.

29. Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Notice.

30. 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.

31. 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.

32. On or before the Claims Determination Date, the Distribution Agent shall mail by USPS 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.

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

**Payment of Approved Claims**

34. The Distribution Agent shall distribute the Net Available Fund to all Authorized 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.

35. Within sixty (60) days following the Claims Determination Date, the Distribution Agent shall prepare a final payee list that includes the names of Authorized Claimants and the Recognized Claim of each Authorized Claimant. The Distribution Agent shall provide the final payee list to the Commission staff, and upon review, the Commission staff shall move the Court to transfer all funds in the CRIS account to the Distribution Agent for distribution pursuant to the Distribution Plan. In conjunction with the motion seeking transfer of the Net Available Fund in

the CRIS account to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

36. Following the Court's approval of the Commission staff's motion to distribute the funds from the Net Available Fund to Authorized Claimants as provided for in this Distribution Plan, the Court may issue an order to the Clerk of the Court to transfer all funds in the CRIS account representing the Distribution Fund, less any expenses due the Court, to the account or accounts established by the Distribution Agent. The Distribution Agent shall commence the distributions to all Authorized Claimants as promptly as possible following the transfer of the funds.

37. Upon receipt of the monies from the CRIS account 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 Well-Capitalized United States commercial bank (the "Bank"), to be proposed by the Distribution Agent and not unacceptable to the staff of the Commission. In the event the Bank's Well-Capitalized status changes, the Distribution Agent will promptly inform the SEC staff of such change in status.
- b. The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to the Commission staff 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 name of each account shall be in the following form: "QSF, SEC v Rockford Funding Group LLC, et al., with EIN No. 45-2638907," as custodian for the benefit of investors allocated a distribution from the Distribution Plan in SEC v Rockford Funding Group LLC, et al., (the "Distribution Fund Escrow Account"). 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 Distribution Fund 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 Authorized Claimants, tax obligations and/or fees and expenses of the Tax Administrator and Distribution Agent, including investment or reinvestment in one or more bank accounts 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 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.

- 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.

38. If, after the Distribution Agent makes the distribution to Authorized 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.

39. 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 Authorized Claimants by the Distribution Agent shall bear a stale date of one hundred and twenty (120) 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 Authorized Claimant's check has not been negotiated within the one hundred and twenty (120) day period and has been voided by the Distribution Agent, that Authorized Claimant's

claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the Distribution Fund.

40. The Distribution Agent shall use all reasonable commercially available resources to locate all Authorized Claimants whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service. However, the claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.

41. 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 one hundred and twenty (120) days after the date of issuance; and,
- d. The name of a person or entity to contact, if the Authorized Claimant has any questions regarding the distribution.

42. Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Distribution Fund distribution checks, 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 Fixed Dividend Contract.

43. 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 Authorized Claimants and their Recognized Claim 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 Authorized Claimant of a distribution from the Distribution Fund, such Authorized Claimant shall be deemed to have released all claims that such Authorized 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.

44. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by a Potentially Eligible Claimant shall not affect an Authorized Claimant's rights and claims against any party (other than the Distribution Agent), including, but not limited to, past or present directors, officers, employees, promoters, agents, advisers, Affiliates, nominees, assigns, creditors, or controlled entities.

**Post-Distribution**

45. The Distribution Agent shall reissue checks to Authorized Claimants, upon the receipt of a valid, written request from the Authorized 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 and twenty (120) days post-distribution.

46. 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 and twenty (120) days post-distribution. 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 and twenty (120) days post-distribution. However,

the Authorized Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.

47. One hundred and 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.

**Wrap-Up and Wind Down of Distribution**

48. 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.

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

50. 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 an 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: (1) the final accounting has been submitted and approved by the Court, (2) all taxes and fees have been paid, and (3) all remaining funds or any residual have been paid to the Commission for transfer to the United States Treasury.

**Payment of Costs, Fees, and Taxes, and Filing Report and Accountings**

51. 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.

52. 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.

53. The progress reports shall inform the Court and the staff of the Commission 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 Authorized Claimants under this Distribution Plan.

54. 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.

55. 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.

**Other Rights and Powers**

56. 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 him 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.

57. 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.

58. 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.

59. 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.

60. A Proposed Order Approving the Plan of Distribution is filed herewith.

WHEREFORE, the Commission respectfully requests that the Court approve the Plan of Distribution.

Dated: New York, New York  
September 30, 2014

ANDREW M. CALAMARI,  
Regional Director  
JACK KAUFMAN  
STEPHEN A. LARSON

          /s/          John J. Graubard            
JOHN J. GRAUBARD  
Securities and Exchange Commission  
New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281-1022  
Tel.:              212-336-0084 (Graubard)  
Fax:               212-336-1353  
E-mail:           graubardj@sec.gov

SONDRA H. PANAH  
Securities and Exchange Commission  
Office of Distributions  
100 F Street, N.E.  
Washington, DC 20549  
Tel.:              202-551-4338  
E-mail:           panahis@sec.gov