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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DR. JOSEPH F. "CHIP" SKOWRON III; and
 DR. YVES M. BENHAMOU,

Defendants,

and

FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P.;
 FRONTPOINT HEALTHCARE HORIZONS FUND, L.P.;
 FRONTPOINT HEALTHCARE I FUND, L.P.;
 FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P.;
 FRONTPOINT HEALTHCARE LONG HORIZONS FUND, L.P.; and
 FRONTPOINT HEALTHCARE CENTENNIAL FUND, L.P.,

Relief Defendants.

Civil Action No.
 10-CV-8266
 (DAB)
 ECF CASE

**ORDER APPROVING A FAIR FUND
PLAN OF DISTRIBUTION TO INVESTORS**

The Court has considered Plaintiff's Motion for an Order Approving A Fair Fund Plan of Distribution to Investors (the "Motion") and the proposed Distribution Plan. For good cause shown, the Court grants the Motion and approves in its entirety the Distribution Plan set forth below. The Distribution Plan shall govern the management and distribution of the Fair Fund previously established by order entered June 5, 2012.

SO ORDERED.

DISTRIBUTION PLAN

A. Introduction

1. The Securities and Exchange Commission (the “Commission”) commenced this action by filing a Complaint against Dr. Yves M. Benhamou (“Benhamou”) on November 2, 2010. On April 13, 2011, the Commission filed an Amended Complaint, which in addition to Benhamou, included Dr. Joseph F. “Chip” Skowron III (“Skowron”) (collectively, “Defendants”) and six relief defendants (“Relief Defendants”).¹ By separate orders, the Court entered final judgments against Benhamou, Skowron and the Relief Defendants on November 17, 2011. As required by the final judgments, total payments of approximately \$35,000,000 were paid to the Clerk of the Court and placed into an interest-bearing account with the Court Registry Investment System (“CRIS”).

2. Per the Order for Creation of a Fair Fund and Appointment of Distribution Agent (“Order”) dated June 4, 2012, the Court authorized the establishment of a Fair Fund to return the funds to eligible claimants and appointed Gilardi & Company, LLC, as the Distribution Agent.

B. Definitions

As used herein, the following definitions shall apply:

3. “Affiliate” shall have the meaning set forth in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101(2).

4. “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

¹ The six Relief Defendants are: Frontpoint Healthcare Flagship Fund, L.P.; Frontpoint Healthcare Horizons Fund, L.P.; Frontpoint Healthcare I Fund, L.P.; Frontpoint Healthcare Flagship Enhanced Fund, L.P.; Frontpoint Healthcare Long Horizons Fund, L.P.; and Frontpoint Healthcare Centennial Fund, L.P.

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.

5. "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.

6. "days" shall mean calendar days, unless specified otherwise.

7. "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.

8. "Distribution Agent" shall mean Gilardi & Company, LLC, the Distribution Agent approved by the Court, to assist with the administration and distribution of the Fair Fund.

9. "Distribution De Minimis Amount" shall mean the minimum Distribution Payment amount of \$10. No Eligible Claimant shall receive a payment unless the pro-rata share of their Recognized Loss results in a Distribution Payment of at least the Distribution De Minimis Amount.

10. "Distribution Payment" shall mean the funds allocated to an Eligible Claimant pursuant to their Recognized Loss.

11. "Distribution Plan Notice" shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the Fair 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 Fair Fund relates to purchases of Human Genome Sciences, Inc. common stock on the Eligible Purchase Dates, 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 Fair 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.

12. "Eligible Claimants" shall mean persons who purchased Eligible Securities on the Eligible Purchase Dates and whose Recognized Loss as per the Plan of Allocation entitles them to a Distribution Payment. Excluded from the Eligible Claimants are:

- (a) 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;
- (b) Any of the Relief Defendants, their current or former directors, officers, or employees, who served in such capacity during the Relevant Period;
- (c) 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;

(d) 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;

(e) Any Person who assigned their right to obtain a recovery in the Commission's action against Defendants or Relief Defendants; 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

(f) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

13. "Eligible Purchase Dates" shall mean December 7, 2007, December 10, 2007, December 11, 2007, December 12, 2007, December 13, 2007, December 14, 2007, December 17, 2007, December 18, 2007, January 2, 2008, January 18, 2008 and January 22, 2008.

14. "Eligible Securities" shall mean shares of Human Genome Sciences, Inc. ("HGSI") common stock.

15. "FIFO" shall mean sales of HGSI common stock shares during the Relevant Period will be matched, in chronological order, first against shares held at the beginning of the

Relevant Period and will be discarded from the Recognized Loss calculation. The remaining sales of shares during the Relevant Period will then be matched, in chronological order, against shares purchased during the Relevant Period.

16. "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 Fair Fund. Subject to certain extensions provided for in this Distribution Plan, the Filing Deadline shall be ninety (90) days from the earliest date of the Summary Notice Publication.

17. "Fair Fund" shall refer to the disgorgement, prejudgment interest and civil penalties paid by the Defendants and Relief Defendants in compliance with the final judgments in this case, plus any additions thereto as may be provided by future Court orders or agreements in related cases or otherwise.

18. "Net Available Fund" shall mean Fair Fund, plus accumulated interest and earnings thereon, less fees and costs of administering the Fair Fund and implementing the Distribution Plan, and paying any taxes that may be assessed against the Fair Fund.

19. "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.

20. "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.

21. "Plan of Allocation" shall mean the methodology by which a Potentially Eligible Claimant's Recognized Loss is calculated.

22. "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.

23. "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 purchases and sales of HSGI common stock.

24. "Relevant Period" shall mean December 7, 2007 to January 23, 2008.

25. "Recognized Loss" shall mean the Potentially Eligible Claimant's compensable loss pursuant to the Plan of Allocation.

26. "Summary Notice Publication" shall mean the notice published on an Internet-based newswire service. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement that the Fair Fund relates to purchases of Human Genome Sciences, Inc. common stock on the Eligible Purchase Dates and the means of obtaining a Notice Packet.

27. "Well-Capitalized" shall have the same meaning as defined by the Federal Reserve Act Subpart D, 12 C.F.R. 208.43.

C. Plan of Allocation

28. The Net Available Funds shall be distributed to pay Eligible Claimants as provided under the terms of this Distribution Plan.

29. The Distribution Agent may, but is not required to, aggregate an Eligible Claimant's accounts for purposes of determining the Recognized Loss amount and/or to meet the Distribution De Minimis Amount.

30. The Recognized Loss for Potentially Eligible Claimants who purchased shares of HGSI on any of the Eligible Purchase Dates, and held those shares through the close of trading on January 22, 2008, will be calculated on a FIFO basis. Shares of HGSI common stock purchased on the Eligible Purchase Dates shall be matched, on a FIFO basis, against shares of HGSI common stock sold during the Relevant Period. For Potentially Eligible Claimants who made multiple purchases or sales during the Relevant Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases, and sales for purposes of calculating the Recognized Loss.

31. A Potentially Eligible Claimant will be eligible to receive a Distribution Payment from the Net Available Fund only if the Potentially Eligible Claimant had a net loss. In calculating the net loss, the trading loss (or gain) for all transactions in HGSI common stock will be totaled. If an investor has an overall net gain, or a net loss equal to zero, the Potentially Eligible Claimant will not be eligible to receive a Distribution Payment from the Net Available Fund.

32. The Recognized Loss will be zero (\$0.00) for any shares purchased on Eligible Purchase Dates and sold at any time prior to the close of trading on January 22, 2008, regardless of whether a loss may have been sustained on the round-trip transaction.

33. The Recognized Loss for shares purchased on the Eligible Purchase Dates and held as of the close of trading on January 23, 2008 will be the difference between the purchase price per share and \$5.62 per share, the closing price on that day, multiplied by the number of shares purchased and held.

34. The Recognized Loss for shares purchased on the Eligible Purchase Dates and sold on January 23, 2008 will be the difference between the purchase price per share and the greater of: a) the actual sale price per share; or b) \$5.62 per share, multiplied by the number of shares purchased and sold.

35. The Net Available Fund will be apportioned among Eligible Claimants on the Eligible Purchase Dates according to a formula that takes into account the amount of Defendant's "avoided losses" on those days. This calculation is based on the number of shares and the prices at which Defendant disposed of its shares in the market on the Eligible Purchase Dates. The percentage allocation was calculated as follows for each day:

Percentage Allocation Per Day	
12/7/2007	8.64%
12/10/2007	8.37%
12/11/2007	3.71%
12/12/2007	2.62%
12/13/2007	10.63%
12/14/2007	0.49%
12/17/2007	8.74%
12/18/2007	6.70%
1/2/2008	0.14%

Percentage Allocation Per Day	
1/18/2008	12.28%
1/22/2008	37.68%
Total:	100.00%

36. Eligible Claimants will receive their pro-rata portion of the Net Available Fund allocated to each of the Eligible Purchase Dates based on his, her or its total Recognized Loss, as calculated above, as a percentage of all Eligible Claimants' Recognized Losses on that particular Eligible Purchase Date(s). Under no circumstances shall an Eligible Claimant receive more than his, her or its Recognized Loss.

37. Distribution Payments will be made to Eligible Claimants after all claims have been processed and after approval has been received from the Courts and/or the Commission. No Distribution Payments will be made to Eligible Claimants whose pro-rata portion of the fund is less than the Distribution De Minimis Amount. To the extent the Net Available Fund allocated to a particular date is not fully claimed, the balance will be apportioned to the remaining dates that are not fully funded according to the applicable percentages shown above, re-weighted after the elimination of dates that were fully funded.

D. General Administration Provisions, Claims Procedure and Notice to Eligible Claimants

38. 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 Fair Fund to each Eligible Claimant.

39. 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.

40. 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.

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

42. 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.

43. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and such plan's participants, are properly made by the custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of plan participants and the number of shares owned by each plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner consistent with its fiduciary duties and the account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potentially Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent prior to the Filing Deadline.

44. Claims resulting in a Distribution Payment of less than the Distribution De Minimis Amount will not be paid.

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

Identification of and Notice to Potentially Eligible Claimants

46. The Distribution Agent shall, insofar as is practicable, identify individual Potentially Eligible Claimants from a review of trading records, account information provided by registered broker-dealers and investment advisers, and any other source available to them.

47. 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 portal on its own website, www.gilardi.com, constructed for the administration of the Fair 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 and Summary Notice Publication to the Commission and request that the Commission post them on the Investors Claims Funds page of SEC.gov and establish a link to the Fair Fund's website;
- (g) Establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the Fair Fund;
- (h) Publish a copy of the Summary Notice Publication, approved by Commission staff, on an Internet-based newswire service for thirty days. In

addition, the Summary Notice Publication will be published on the Distribution Agent's website; and

(i) The Distribution Agent will deliver electronic copies of the Proof of Claim Form to electronic filers who regularly submit electronic claims on behalf of their clients.

48. The Distribution Agent will also send Notice Packets and cover letters to brokerages and other institutions ("Nominal Holders") that hold securities in "street name" as nominees for the benefit of their customers who are the beneficial owners of the securities.

49. 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.

50. The Distribution Agent shall attempt to locate any Potentially Eligible Claimant whose Proof of Claim Form has been returned by the USPS as undeliverable. The Distribution Agent shall immediately mail again any returned undelivered mail for which the USPS has provided a forwarding address.

51. 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.

Review of Claims Process

52. The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Recognized Loss, 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 Eligible 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.

53. 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 Fair 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.

54. 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 engage an independent, third-party firm, acceptable to Commission staff, to perform a set of agreed upon tasks, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Allocation Plan. The Distribution Agent shall provide counsel for the

Commission with the results of that review together with any written analysis or reports related to the review, and, upon request, shall make the firm available to the Commission to respond to questions concerning the review.

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

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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

61. 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.

62. Within sixty (60) days following the Claims Determination Date, the Distribution Agent shall prepare a final payee list that includes the names of Eligible Claimants and the

Recognized Loss of each Eligible Claimant. 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 in the CRIS account to the Distribution Agent for distribution pursuant to the Distribution Plan. In conjunction with the motion seeking transfer of the CRIS account to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

63. 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 the Clerk of the Court to transfer all funds in the CRIS account representing the Fair Fund, less any expenses due the Court, to the account or accounts established by the Distribution Agent in accordance with Paragraph 64 below. The Distribution Agent shall commence the distributions to all Eligible Claimants as promptly as possible following the transfer of the funds.

64. Upon receipt of the monies from the Court's registry 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 counsel for 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 name of each account shall be in the following form: "QSF, SEC v Dr. Joseph F. "Chip" Skowron, et al., EIN No. _____," as custodian for the benefit of investors allocated a distribution from the Distribution Plan in SEC v Dr. Joseph F. "Chip" Skowron, et al., (the "Fair Fund Escrow Account"). The Distribution Agent and Bank shall also establish a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked 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 Fair 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 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 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. 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.

(e) 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 Fair 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.

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

66. All Fair 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 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 Eligible 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 Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the Fair Fund.

67. 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 U.S. Postal Service. However, the claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.

68. 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; and
- (d) The name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

69. Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Fair Fund distribution checks, on their face, or the accompanying mailing shall clearly indicate that the money is being distributed from a

Fair Fund established by the Commission to compensate investors for harm as a result of their investment in HGSI common stock.

70. 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 Fair 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 Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

71. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible 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

72. 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 and twenty (120) days post-distribution.

73. 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.

74. One hundred and fifty (150) 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

75. The Distribution Agent will destroy all documents, including documents in any media, six 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 Fair Fund six months after the transfer of any remaining funds to the Commission.

76. No further claims shall be made against the Fair 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.

77. 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 Fair 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.

Responsibilities of the Tax Administrator

78. The Net Available 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 returns; and
- (c) Fulfilling any information reporting or withholding requirements required for distributions from the Net Available Fund.

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

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

80. 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 Fair Fund, subject to the review and approval of the Court.

81. 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.

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

- (a) Specify, at a minimum, the location of the account(s) comprising the Fair Fund; and
- (b) Include, among other things, an interim accounting of all monies in the Fair 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 Fair 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.

83. 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.

84. The Clerk of the Court shall provide the Distribution Agent with any and all account information relating to funds held in the CRIS 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

85. 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

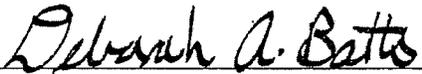
with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

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

87. 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.

88. 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.

Dated: May 13, 2013


Honorable Deborah A. Batts
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK