

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 1:11-cv-05731
	:	
MYRON WEINER,	:	Judge Dora Lizette Irizarry
	:	Magistrate Judge Robert M. Levy
Defendant.	:	
	:	
	:	
	:	

MOTION TO APPROVE PLAN OF DISTRIBUTION

The plaintiff Securities and Exchange Commission (the “Commission”) hereby submits this Motion to Approve Plan of Distribution.

WHEREFORE, the Commission respectfully requests that this Court enter the attached [Proposed] Order Approving Plan of Distribution and grant such other relief as the Court deems just and proper.

Dated: June 18, 2015

Respectfully submitted,

/s/ Sondra Hickey Panahi
SONDRA HICKEY PANAH I SH5158
Securities and Exchange Commission
Division of Enforcement, Office of Distributions
100 F Street, N.E.
Washington, DC 20549-5631
Tel.: 305-982-6337
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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing Motion to Approve Plan of Distribution and its accompanying documents to the ECF registrants herein by electronically transmitting it using the ECF System for filing and transmittal of a Notice of Electronic Filing, and to the person listed below by First Class U.S. Mail on the 18th day of June 2015:

Gary S. Graifman, Esq.
William Schiffman, Esq.
KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.
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/s/ Toyya Azian
Toyya Azian

UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

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MYRON WEINER,

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[PROPOSED] ORDER APPROVING PLAN OF DISTRIBUTION

The Court having reviewed Plaintiff Securities and Exchange Commission’s Motion to Approve Plan of Distribution dated June 18, 2015, and for good cause shown,

IT IS HEREBY ORDERED that the Plan of Distribution (“Distribution Plan”) submitted on June 18, 2015 is approved, and that Analytics Consulting, LLC, having been appointed the Distribution Agent, shall implement such Distribution Plan and shall perform such actions and make such distributions as are provided for under the terms of the Distribution Plan.

IT IS FURTHER HEREBY ORDERED that the Court shall retain jurisdiction as appropriate over the Distribution Plan and the implementation thereof.

Dated: New York, New York
_____, 2015

UNITED STATES DISTRICT JUDGE

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**SECURITIES AND EXCHANGE
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PLAN OF DISTRIBUTION

Introduction

1. The Securities and Exchange Commission (the “Commission”) filed a complaint against the defendant Myron Weiner (“Weiner” or “Defendant”) on November 22, 2011. In its complaint, the Commission alleged that Weiner sold eight (8) million shares of Spongetech Delivery Systems, Inc. (“Spongetech”) stock to the investing public in violation of the registration requirements of Section 5 of the Securities Act of 1933 (“Securities Act”). Weiner purchased the Spongetech shares from a Spongetech affiliate at a discounted price of five (5) cents, and then sold the shares into the public market less than three months later for 20 cents, for a profit of \$1,215,057.96. These transactions were not registered with the Commission, and these transactions did not satisfy any exemption from the registration requirements.
2. On December 19, 2011, the Court entered final judgment against Weiner making him liable for disgorgement of \$1,215,057.96, representing profits gained as a result of his

conduct, together with prejudgment interest thereon in the amount of \$80,135, and a civil penalty in the amount of \$50,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]. Pursuant to the final judgment, Defendant's obligation of disgorgement, prejudgment interest, and civil penalty was deemed satisfied by the Internal Revenue Service's ("IRS") release to the Commission of \$1,345,192 of the funds seized by the IRS agents on or about June 13, 2011 pursuant to a Stipulation of Settlement entered into by Defendant on November 30, 2011 in a forfeiture proceeding before the Court. Pursuant to the final judgment, on April 16, 2012, the Commission received \$1,345,192 from the IRS, and that amount is currently being held by the Commission at the U.S. Department of the Treasury ("U.S. Treasury") under the case name designation "SEC v. Myron Weiner" (these funds constitute the "Fair Fund").

3. On September 24, 2013, the Court appointed Damasco & Associates, LLP, as Tax Administrator with respect to the funds which constitute the Fair Fund.
4. On March 26, 2015, the Court appointed Analytics Consulting LLC as the Distribution Agent and established the Fair Fund.

Defined Terms

5. 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. “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 Claim Deficiency Notice.
- d. “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.
- e. “Days” shall mean calendar days, unless specified otherwise.
- f. “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.
- g. “Distribution Agent” shall mean Analytics Consulting LLC (“Analytics”), the Distribution Agent approved by the Court to assist with the administration and distribution of the Fair Fund.
- h. “Distribution Payment” shall mean the funds allocated to an Authorized Claimant pursuant to their Recognized Claim.

- i. “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 shares purchased from Defendant Myron Weiner, 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.
- j. “Eligible Share” shall refer to Spongetech shares purchased from Defendant on September 3, 2009 at a price of \$0.20 per share exclusive of brokerage or other transaction fees.
- k. “Fair Fund” shall refer to the disgorgement, prejudgment interest and civil penalties received by the Commission in satisfaction of the Defendant’s ordered disgorgement, prejudgment interest, and civil penalty pursuant to the final judgment in this case, plus any accrued interest thereon, and any additions thereto

as may be provided by future Court orders or agreements in related cases or otherwise.

- 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 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 Notice Packet mailing.
- m. "Net Available Fund" shall mean Fair Fund, less fees and costs of administering the Fair Fund and implementing the Distribution Plan, and less any taxes that may be assessed against the Fair Fund.
- n. "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.
- o. "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.

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

q. “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:

1. Defendant, his current or former employees, Affiliates, or controlled entities who served in such capacity during at least June 2009 through September 2009, and their assigns, creditors, heirs, distributees, spouses, parents, and children;
2. 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;
3. 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;

4. Any Person who assigned their right to obtain a recovery in the Commission's action against 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

5. The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

r. "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 purchase of Eligible Shares.

s. "Recognized Claim" shall mean the Potentially Eligible Claimant's compensable amount pursuant to the Plan of Allocation.

Plan of Allocation

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

(a) Recognized Claim will be calculated as price per share (\$0.20) multiplied by

number of Eligible Shares purchased.

- (b) For example, the Recognized Claim of a purchase of 1,000 shares at \$0.20 per share on September 3, 2009 would be calculated as a Recognized Claim of \$200.00 (1,000*\$0.20).
- (c) The date of acquisition is the “trade” date as distinguished from the “settlement” date.
- (d) An Authorized Claimant’s *pro rata* allocation shall not exceed the Recognized Claim.

Plan and Procedures

- 7. 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.
- 8. 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.
- 9. 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.

10. To the extent that a 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.
11. Claims on behalf of a retirement plan covered by Section 3(3) of Employee Retirement Income Security Act (“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 investment amounts of 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.
12. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make such adjustments consistent with the purposes of the Distribution Plan as may be

agreed upon between the Distribution Agent and the Commission and approved by the Court.

Identification of and Notice to Potentially Eligible Claimants

13. The Distribution Agent shall, insofar as is practicable, identify individual Potentially Eligible Claimants from a review of information provided by the Commission. 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.
14. 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 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 to the Commission staff and request that the Commission staff post it on the Information for Harmed Investors page of www.SEC.gov and establish a link to the Fair Fund's website; and
 - (g) Establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the Fair Fund;
15. 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.
 16. 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, as soon as is practicable, mail again any returned undelivered mail for which the USPS has provided a forwarding address.
 17. 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

18. 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.

19. 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.
20. 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 counsel for the Commission 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

21. 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.
22. 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.
23. 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.
24. 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.

26. 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.
27. 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.
28. All determinations made by the Distribution Agent in accordance with this Distribution Plan shall be final

Payment of Approved Claims

29. 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.
30. 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 being held by the Commission at the U.S. Treasury under the case name designation "SEC v. Myron Weiner" 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 Commission account to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

31. Following the Court's approval of the Commission's motion for the authority 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 authorizing the Commission to transfer funds from the Fair Fund being held in the Commission account 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.
32. Upon receipt of the monies from the Commission 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 United States commercial bank (the "Bank"), to be proposed by the Distribution Agent and not unacceptable to the staff of the Commission.
 - (b) The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to 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 Myron Weiner, with EIN No. 90-1022795” as custodian for the benefit of investors allocated a distribution from the Distribution Plan in SEC v Myron Weiner, (the “Fair Fund Escrow Account”). The Distribution Agent and the 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 Fair Fund Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government (“U.S. 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 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.

- (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 Fair Fund under the full faith and credit of the U.S. Government and/or the maximum available FDIC deposit insurance and pass-through deposit insurance.
33. If, after the Distribution Agent makes the distribution to Authorized Claimants, funds remain in the Fair Fund in addition to tax reserves, those funds shall be paid to the Commission for transfer to the U.S. Treasury.
34. 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 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 and all such funds will remain in the Fair Fund.

35. 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 USPS. However, the Authorized Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.
36. 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.
37. 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 the Fixed Dividend Contract.
38. 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 Claims 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 Fair 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 Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

39. 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

40. 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.
41. The Distribution Agent shall use its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all Authorized Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Authorized Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address. Where new address information becomes available, the Distribution Agent shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than one hundred twenty (120) days

after the initial mailing of the original check), the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. Such reissued checks will be void either ninety (90) days after issuance or ninety (90) days after the stale date of the original check, whichever is later.

42. 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.
43. 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 U.S. Treasury upon receipt of written instructions by the Distribution Agent.

Wrap-Up and Wind Down of Distribution

44. Pursuant to Commission direction, the Distribution Agent will either turnover to the Commission or destroy all documents, including documents in any media, six (6) years after the approval of the final accounting. In addition, the Distribution Agent will shut down the toll-free number and website established specifically for the administration of the Fair Fund six (6) months after the transfer of any remaining funds to the Commission.
45. No further claims shall be made against the Fair 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.
46. 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 have been paid to the Commission for transfer to the U.S. Treasury.

Responsibilities of the Tax Administrator

47. 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 QSF, 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 requesting 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.
48. 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

49. 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 on a quarterly basis, subject to the review and approval of the Court.

50. 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.
51. 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 Authorized Claimants under this Distribution Plan.
52. 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, fees and expenses.

Other Rights and Powers

53. 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.

54. 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.
55. 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.
56. 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.