

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 19-CV-24713-KMW**

SECURITIES AND EXCHANGE COMMISSION,  
Plaintiff,

v.

NEIL BURKHOLZ, FRANK BIANCO,  
PALM FINANCIAL MANAGEMENT, LLC, and  
SHORE MANAGEMENT SYSTEMS, LLC,

Defendants, and  
RHODA BURKHOLZ, and SUZANNE BIANCO  
Relief Defendants.

---

**DISTRIBUTION PLAN**

**I. OVERVIEW**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “Commission”) in accordance with the practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by Neil Burkholz, Frank Bianco, Palm Financial Management, LLC (“Palm Financial”), Shore Management Systems, LLC (“Shore Management”) (collectively, the “Defendants”), and Relief Defendants Rhoda Burkholz and Suzanne Bianco in this proceeding, including any additional funds collected in the future (*See* paragraph 7 below).

2. As described more specifically below, the Plan seeks to compensate investors who were harmed, by the Defendants’ conduct alleged in the Complaint, in connection with their investments in Palm Financial and/or Shore Management between January 2014 and November 2019 (the “Relevant Period”), as calculated using the methodology detailed in the Plan of Allocation (attached as Exhibit A). Based on information obtained by the Commission during its investigation and the review and analysis of applicable records, the Commission has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process.

3. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over its implementation.

**II. BACKGROUND**

4. In the Complaint, the Commission alleged that Defendants knowingly operated a fraudulent investment scheme that, since at least 2014, raised more than \$1.49 million from at least 30 investors, many of whom were senior citizens. To solicit and retain investors, Defendants falsely represented that they were advisers and fiduciaries who would profitably manage investor assets. In reality, Defendants through at least two investment management companies (Palm Financial and Shore Management), knowingly misappropriated investor assets by diverting them to pay other investors and by transferring funds to themselves and their spouses. In short, Defendants operated a Ponzi scheme. By November 2019, Defendants had raised over \$1.49 million. As a result of the conduct alleged in the Complaint, the Commission charged Defendants with violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder.

5. On May 11, 2020, the Court entered a Final Judgment against Defendant Burkholz. The Court found that Burkholz violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. The Court ordered him to pay \$373,651 in disgorgement, plus prejudgment interest in the amount of \$55,928, and a civil penalty of \$920,825, for a total for \$1,350,404. The Court ordered Relief Defendant Rhoda Burkholz to be jointly and severally liable with Defendant Burkholz for \$231,418.64 of the disgorgement and \$27,402.62 of the prejudgment interest. Defendant Bianco consented to entry of a Final Judgment without admitting or denying the allegations of the Complaint. The Court ordered Bianco to pay \$386,022.29 in disgorgement, prejudgment interest in the amount of \$57,974.93, and a civil penalty in the amount of \$920,825, for a total of \$1,364,822.22. The Court ordered Relief Defendant Suzanne Bianco to be joint and severally liable with Defendant Bianco for disgorgement of \$42,048 and prejudgment interest of \$7,703.86. The Final Judgments provide that the Commission may propose a plan to distribute the collected funds.

6. As part of the request to approve this Plan, the Commission is requesting this Court: (a) establish a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, for the funds collected pursuant to the Final Judgments, including any funds collected in the future; (b) appoint Miller Kaplan Arase LLP, a certified public accounting firm, (“Miller Kaplan”), with one of their offices located in San Francisco, California, as Tax Administrator of the Fair Fund; (c) appoint Adriene Mixon, Trial Attorney, a Commission employee, as the distribution agent (“Distribution Agent”) of the Fair Fund to oversee the administration and the distribution of the Fair Fund; and (d) authorization to approve and direct the payment of all taxes and the fees and expenses of the Tax Administrator from the Fair Fund, without further Court Order.

7. To date, Bianco has paid \$48,000 in civil penalties, and together with Suzanne Bianco, \$17,069.01 in disgorgement, Burkholz and Rhoda Burkholz have paid \$261,089.84 in disgorgement and \$27,402.62 in prejudgment interest, Palm Financial has paid \$203.65 in prejudgment interest, and Shore Management has paid \$52,071.43 in prejudgment interest for a grand total of \$405,836.55. The current balance of the Fund, including accrued interest is \$412,060.40, which is being held in an SEC-designated account at the U.S. Department of Treasury.

### **III. DEFINITIONS**

As used in this Plan, the following definitions will apply:

8. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator and the Third-Party, and investment and banking costs.

9. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

10. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a Recognized Loss, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

11. **“Excluded Party”** shall mean: (a) the Defendants, and Defendants’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities; (b) the Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent; and (c) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

12. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in the Complaint. Any additional funds collected from the Defendants, pursuant to the Final Judgments will be added to the Fair Fund.

13. **“Final Determination Notice”** means the written notice sent by the Distribution Agent to (a) any Preliminary Claimant who timely submitted a written dispute of his, her, or its calculated Recognized Loss notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice as described in paragraph 31, except for those whose Plan Notice were returned as “undeliverable,” notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

14. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

15. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

16. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

17. **“Plan Notice”** means a written notice from the Third-Party to each Preliminary Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission’s website and instructions for requesting a copy of the Plan; specification of any information needed from the Preliminary Claimant, which may include a W-9 or SSN/TIN 1099 form, to prevent him, her, or it from being deemed an Unresponsive Preliminary Claimant; his, her, or its Recognized Loss; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

18. **“Plan of Allocation”** means the methodology used by the Distribution Agent to calculate if a Preliminary Claimant has suffered a Recognized Loss. The Plan of Allocation is attached as Exhibit A.

19. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Distribution Agent based on its review and analysis of applicable records obtained by the Commission during its investigation, who may have suffered a loss as a result of their investment in Palm Financial and Shore Management during the Relevant Period.

20. **“Recognized Loss”** means the amount loss calculated in accordance with the Plan of Allocation.

21. **“Relevant Period”** is January 2014 to November 2019.

22. **“Third-Party”** shall mean a third-party firm engaged by the Distribution Agent to perform some of the administrative tasks associated with implementing the Plan.

23. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Distribution Agent and/or Third-Party has not been able to verify and/or who does not timely respond to the Third-Party’s attempts to obtain information, including any information sought in the Plan Notice. Unresponsive Preliminary Claimants will not be eligible for a distribution under the Plan.

#### IV. TAX COMPLIANCE

24. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

25. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. 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) Requesting funds necessary for the timely payment of all applicable taxes, the 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 imposed on distributions from the Fair Fund.

## **V. DISTRIBUTION AGENT**

26. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to obtain accurate mailing information for Preliminary Claimants; disseminating the Plan Notice; cooperating with the Tax Administrator appointed by the Commission to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as ordered by the Court; and researching and reconciling errors and reissuing payments, when possible. The Distribution Agent will engage Guidehouse, Inc. (the “Third-Party”) to perform some of the administrative tasks associated with implementing the Plan, at a cost of \$3,300. The Third-Party’s fees and expenses will be paid from the Fair Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the Commission staff.

27. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change is deemed to be material by the Commission staff, Court approval is required prior to implementation by amending the Plan.

28. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown.

29. The Distribution Agent, as a Commission employee, shall receive no compensation, other than her regular salary as a Commission employee, for her service in administering the Fair Fund.

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

30. Using information obtained during its investigation, the Commission has identified the Preliminary Claimants. Preliminary Claimants are limited to only those Persons, or their lawful successors, who may have suffered a loss as a result of their investments in Palm Financial and/or Shore Management between January 2014 and November 2019.

Procedures for Locating and Notifying Preliminary Claimants

31. Within sixty (60) days of Court approval of the Plan, the Third-Party will:
- (a) Establish and maintain a case specific database of all Preliminary Claimants based upon information provided to and obtained by the Commission staff, including the last known physical and email addresses;
  - (b) Run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring the mailing information for Preliminary Claimants is up-to-date; and
  - (c) Send a Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

Undeliverable Mail

32. The Third-Party will attempt to locate any Preliminary Claimant whose mailing is returned as undeliverable by the U.S. Postal Service or otherwise, including an advanced address search using commercially available resources, if feasible, and will document all such efforts. If another address is obtained, the Third-Party will then resend it the Preliminary Claimant's new address within ten (10) days of receipt of the returned mail. If the mailing is returned again, and the Third-Party, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, then the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

33. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

Procedures to Request Plan Notice

34. Any Person who does not receive a Plan Notice, as described in paragraph 31, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent within sixty (60) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. If the Distribution Agent determines that the Person should have received a Plan Notice, the Third-Party will send the Person a Plan Notice fourteen (14) days of receiving the Person's documentation.

Failure to Respond to Plan Notice

35. If a Preliminary Claimant is requested to respond and fails to respond within thirty (30) days from the initial mailing of the Plan Notice, the Third-Party will make no fewer than two (2) attempts to contact the Preliminary Claimant by telephone or email. The second attempt will in no event take place more than sixty (60) days from the initial mailing of the Plan Notice. If a Preliminary Claimant fails to respond to the Third-Party's contact attempts as described in this paragraph, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

#### Dispute Process

35. Within seventy-five (75) days of the initial mailing Plan Notice, the Distribution Agent must receive a written communication detailing any dispute along with any supporting documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

36. Within ninety (90) days of the initial mailing of the Plan Notices, the Distribution Agent will send a Final Determination Notice to (a) any Preliminary Claimant who timely submitted a written dispute as described in paragraph 35 above, notifying the Preliminary Claimant of her resolution of the dispute; and (b) those Preliminary Claimants who have not responded to the Plan Notice, as described in paragraph 31 above, except for those whose Plan Notice were returned as undeliverable, notifying the Preliminary Claimant that he, she, or it has been deemed an Unresponsive Preliminary Claimant.

#### Distribution Methodology

37. The Distribution Agent will calculate each Preliminary Claimant's Recognized Loss in accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant. All Eligible Claimants whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve

38. Before determining the amount of funds available for distribution and calculating each Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the "Reserve").

39. After all Distribution Payments are made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the Residual described in paragraph 56 below.

#### Preparation of the Payment File

40. Within one hundred twenty (120) days of Court approval of the Plan, the Distribution Agent will compile the Payee information, including the name, address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the “Payee List”).

#### The Bank Account

41. Prior to the disbursement of funds from the Net Available Fair Fund, the Third-Party will establish a bank account at a commercial bank not unacceptable to the Commission (the “Bank”).

#### Distribution of the Fair Fund

42. After preparation of the Payee List, the Commission will petition the Court for authority to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Third-Party in accordance with the Plan. Pursuant to the order, the funds will be transferred to the Bank, and the Third-Party will be responsible for issuing Distribution Payments to Payees in accordance with the Payee List. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee’s bank account in accordance with written instructions provided to the Bank by the Third-Party.

43. All checks will bear a stale date of ninety (90) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee’s claim will be extinguished if he, she, or it fails to negotiate his, her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 47.

44. All Distribution Payments will 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 Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be submitted to the Tax Administrator and Commission staff for review and approval.

45. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

#### Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

46. The Third-Party shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Distribution Agent as “undeliverable.” If new address information becomes available, the

Third-Party will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than ninety (90) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Third-Party shall instruct the issuing financial institution to stop payment on such check. If the Third-Party is unable to find a Payee's correct address, the Distribution Agent, in its discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

47. The Third-Party will reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will direct the Third-Party to issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of sixty (60) days from issuance of the original check or ninety (90) days from the reissuance, and in no event will a check be reissued after ninety (90) days from the date of the original issuance without the approval of Commission staff.

48. The Third-Party will work with issuing financial institution and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Third-Party is responsible for researching and reconciling errors and reissuing payments when possible. The Third-Party is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

49. The Distribution Agent will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as "undeliverable") and take appropriate action to follow-up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may direct the Third-Party reissue such checks, subject to the time limits detailed herein.

50. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

#### Receipt of Additional Funds

51. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Court's termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan.

### Disposition of Undistributed Funds

52. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent, in consultation with the Commission staff, may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

53. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

54. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the Commission and held pending a final accounting.

### Administrative Costs

55. All Administrative Costs will be paid by the Fair Fund and reported to the Court in the final accounting of the Fair Fund referenced below.

### Filing of Reports and Accountings

56. Upon completion of all distributions to Payees and payment of all Administrative Costs, pursuant to the procedures described above, the Third-Party, working with the Tax Administrator, will submit to the Commission staff a final accounting, on a standardized form provided by the Commission staff. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).<sup>1</sup> If distribution of the Residual to investors is infeasible, the Commission may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>2</sup>

### Wind-down and Document Retention

57. The Third-Party will retain all materials submitted by Preliminary Claimants in either paper or electronic form for a period of six (6) years from the date of approval of a final accounting. Materials maintained in electronic form must be accessible and readable for the

---

<sup>1</sup> Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

<sup>2</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

duration of retention. Pursuant to the Commission staff's direction, the Third-Party will either turn over to the Commission or destroy all materials, including documents in any media, upon expiration of this period.

Termination of the Fair Fund

58. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred (a) a final accounting, in a standard accounting format provided by the Commission staff, has been submitted by the Distribution Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has approved the Commission's recommendation as to the final disposition of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).

59. Once the Commission staff has reviewed and accepted the final accounting, the Commission will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

60. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation is designed to compensate investors based on their losses due to investments in Palm Financial Fund LLC and/or Shore Partners LLC between January 2014 and November 2019 (the “Relevant Period”). During the Relevant Period, the Defendants’ knowingly misappropriated investor funds by diverting them to pay other investors and by transferring funds to themselves and their spouses. Defendants invested less than half of the funds solicited from investors, investments that have resulted in near-total losses caused by risky options trading. Investors who did not invest in Palm Financial Fund LLC and Shore Partners LLC during the Relevant Period were not harmed by the Defendants’ conduct and are ineligible to recover under this Plan. Based upon records obtained by the Commission during its investigation, the Distribution Agent has identified those investors, or their lawful successors, who may have suffered losses as a result of their investments in Palm Financial Fund LLC and/or Shore Partners LLC during the Relevant Period (the “Preliminary Claimants”). Investors who did not invest in connection with the Defendants’ misconduct during the Relevant Period are ineligible to recover under this Plan.

The Distribution Agent will calculate each Preliminary Claimant’s loss (“Recognized Loss”) as the sum of their investment amounts *minus* the sum of their redemption amounts, if any.

If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

To avoid payment of a windfall, the Recognized Loss will be reduced by the amount of any compensation for the loss that resulted from the conduct alleged in the Complaint that was received from another source (e.g., class action settlement), to the extent known by the Distribution Agent.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: If the Net Available Fair Fund, as defined in the Plan, is equal to or exceeds the sum of Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its Recognized Loss, plus “Reasonable Interest” if applicable. If the Net Available Fair Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata Share*” of the Net Available Fair Fund (and no Reasonable Interest). In either case, the distribution amount will be subject to the “Minimum Distribution Amount.”

Reasonable Interest: If the Net Available Fair Fund exceeds that necessary to pay all Eligible Claimants their Recognized Losses in full, the Distribution Agent, in consultation with the Commission staff, may include interest in the distribution amount to compensate Eligible Claimants for the time value of their respective Recognized Losses. Reasonable Interest will be calculated using the Short-term Applicable Federal Rate plus three percent (3%), compounded quarterly from the end of the Relevant Period through the approximate date of the disbursement of the funds. If there are insufficient funds to pay Reasonable Interest in full to all Eligible Claimants, each Eligible Claimant will receive his, her or its *Pro Rata* Share of the excess funds as the Reasonable Interest amount.

Pro Rata Share: A *Pro Rata* Share computation is intended to measure Eligible Claimants' Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant's *Pro Rata* Share as the ratio of his, her or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. If an Eligible Claimant's distribution amount is less than the Minimum Distribution Amount, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and his, her or its distribution amount will be reallocated on a *pro rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

Payee: An Eligible Claimant whose distribution amount (inclusive of Reasonable Interest, if any) equals or exceeds the Minimum Distribution Amount will be deemed a Payee and receive a Distribution Payment equal to his, her or its distribution amount. In no event will a Payee receive from the Fair Fund more than his, her or its Recognized Loss, plus Reasonable Interest, if applicable.