

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

y

SECURITIES AND EXCHANGE COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No. 03-CV-10658 (DPW)  
 )  
GEOFFREY E. FITTS AND )  
WILLIAM D. FABRI, SR., )  
 )  
Defendants. )

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR APPROVAL OF PLAINTIFF'S PROPOSED PLAN FOR DISTRIBUTION OF FUNDS.

Plaintiff Securities and Exchange Commission ("Commission") hereby moves for an order approving the Commission's Proposed Plan for Distribution of Funds, a copy of which is attached as Exhibit 1. The grounds for this motion are set forth in the accompanying Memorandum of Law.

Respectfully submitted,

JUAN MARCEL MARCELINO  
DISTRICT ADMINISTRATOR

By\_

  
Euke T. Ctagigan (Mass Bar No. 561117)  
Senior Trial Counsel

Bradford E. Ali (Mass. Bar No. 649541)  
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Dated: August 22, 2003

CERTIFICATE OF SERVICE

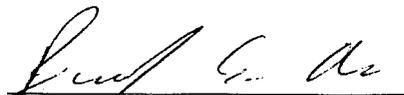
I hereby certify that on August 22, 2003, I caused copies of the foregoing document to be served on counsel for the defendants, all by first class mail at the addresses indicated below:

Counsel for Defendant Fitts

William J. Cintolo, Esq.  
Cosgrove, Eisenberg and Kiley, P.C.  
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Counsel for Defendant Fabri

Frederick W. Riley, Esq.  
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Lynnfield, MA 01940-2351

  
Bradford E. Ali, Esq.

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,     )  
  Plaintiff,     )  
  v.     )     C.A. No. 03-CV-10658 (DPW)  
GEOFFREY E. FITTS AND     )  
WILLIAM D. FABRI, SR.,     )  
  Defendants.     )

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
PROPOSED PLAN FOR DISTRIBUTION OF FUNDS

1.     Background

1.     On April 10, 2003, Plaintiff Securities and Exchange Commission ("Commission") filed an action for a permanent injunction and other equitable relief against a former director of MetroWest Bank ("MetroWest"), Defendant Geoffrey E. Fitts ("Fitts"), and Fitts' friend and business associate, Defendant William D. Fabri, Sr. ("Fabri"). The Commission alleged that Fitts, who was aware that MetroWest planned to be acquired by another bank, told Fabri about the impending takeover on May 21 and 22, 2001. The Commission further alleged that on May 23, 2001, Fabri bought 3,000 shares of MetroWest common stock while in possession of material, nonpublic information concerning MetroWest, and caused another person (hereinafter referred to as "the Second Trader" to purchase 325 shares of MetroWest. The Second Trader purchased 100 shares of MetroWest on May 21, 2001 and 225 shares of MetroWest on May 25, 2001. Banknorth Group, Inc. announced its plans to acquire MetroWest

on June 11, 2001, and the share price of MetroWest increased. The Commission alleged that Fabri profited by \$10,710 and the Second Trader profited by \$1,130 as a result of their trading. The Commission further alleged that such insider trading by Fabri violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated thereunder [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

2. On April 21, 2003, U.S. District Court Judge Douglas P. Woodlock entered a final judgment against Fabri, to which Fabri consented without admitting or denying the allegations in the Complaint. As part of the final judgment, Judge Woodlock: 1) permanently enjoined Fabri from violating Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder; 2) ordered Fabri to disgorge \$11,840 in profits gained as a result of the conduct alleged in the Complaint (\$10,710 for Fabri's trading and \$1,130 for the Second Trader's trading), together with prejudgment interest in the amount of \$1,278.65 (\$1,156.62 for Fabri's trading and \$122.03 for the Second Trader's trading); and, 3) ordered Fabri to pay a civil penalty in the amount of \$11,840 (\$10,710 for Fabri's trading and \$1,130 for the Second Trader's trading), pursuant to Section 21 A of the Exchange Act.

3. Fabri satisfied the disgorgement, prejudgment interest and penalty obligations under the final judgment entered against him by paying \$24,958.65 to the Clerk of this Court for deposit into the Court Registry Investment System (the "CRIS"). Those funds remain in the CRIS pending further order of this Court. The final judgment permits the Commission, by motion, to propose a plan to distribute those funds subject to the Court's approval, and pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission now submits its proposed plan (the "Plan") for distributing the funds to defrauded

investors.

11. Definitions

As used herein, the following definitions shall apply:

4. "Fabri Disgorgement Fund" shall mean the \$22,576.62 Fabri paid the Clerk of this Court for deposit into the CRIS (which consists of \$10,710 in disgorgement for his trading, \$1,156.62 in prejudgment interest for his trading, a \$10,710 civil penalty for his trading) and 90% of the income and interest generated while the \$22,576.62 was in the CRIS.

5. "Fabri Eligible Claimants" shall mean all persons and/or entities who sold MetroWest common stock on May 23, 2001. Those persons and/or entities who are Fabri Eligible Claimants, followed by the number of MetroWest shares sold on May 23, 2001 and the percentage each is to receive of the Fabri Disgorgement Fund, are as follows:

<u>Name and Address</u>	<u># of shares sold</u>	<u>Percentage</u>
Gholam Gamini P.O. Box 81386 Wellesley, MA 02481-2845	240	3.99%
David and Brenda Breen 14 Richmond Street West Roxbury, MA 02132-2522	600	9.97%
Neil Alan and Judith Eve Grand 45 West 60' Street, Apt. 5D New York, NY 10023	600	9.97%
Eleanor M. Anghinetti 17 Wheaton Avenue Rehobeth, MA 02769	1023	17.01%
Richard J. Szeto 82 Davis Avenue Brookline, MA 02146	150	2.49%

Edward A. and Irene G. Plumley 6 Amy Road Framingham, MA 01701	400	6.65%
Harold L. and Wanda M. Baker 594 Northwest Avenue Tallmadge, OH 44278-1202	3000	49.89%

The allocation of the Fabri Disgorgement Fund among the Fabri Eligible Claimants was done pro rata based upon the ratio of the number of MetroWest shares each Fabri Eligible Claimant sold on May 23, 2001 to the total number of MetroWest shares sold on May 23, 2001 by all of the Fabri Eligible Claimants.

6. The "Second Trader Disgorgement Fund" shall mean the \$1,252.03 Fabri paid the Clerk of this Court for deposit into the CRIS (which consists of \$1,130 in disgorgement for the Second Trader's trading and \$122.03 in prejudgment interest for the Second Trader's trading) and 90% of the income and interest generated while the \$1,252.03 was in the CRIS.'

7. The "Second Trader Eligible Claimant" shall mean Knight Securities L.P. ("Knight"), which sold 100 shares of MetroWest stock to the Second Trader on May 21, 2001, and sold 225 shares of MetroWest stock to the Second Trader on May 25, 2001. Knight, whose address is 525 Washington Boulevard in Jersey City, New Jersey 07310, is to receive the entire Second Trader Disgorgement Fund.

### III. Payment Of Eligible Claims

8. After the Court signs an order approving this Plan, the District Court Clerk's

**† If the penalty associated with the Second Trader's trading were included in the Second Trader Disgorgement Fund, the total amount of funds to be returned to the "Second Trader Eligible Claimant" (see definition below) would exceed the amount of money in which the Second Trader Eligible Claimant lost as a result of its sales of MetroWest stock to the Second Trader. Accordingly, such funds associated with the penalty for the Second Trader's trading, in the amount of \$1,130, shall be distributed to the United States Treasury.**

Office shall forthwith disburse the funds to the Fabri Eligible Claimants and the Second Trader Eligible Claimant in accordance with the provisions of this Plan.

9. If for any reason monies from the Fabri Distribution Fund or Second Trader Distribution Fund are unclaimed after 60 days, or if checks written by the District Court Clerk's Office are returned by the Fabri Eligible Claimants or the Second Trader Eligible Claimant, those funds shall be distributed to the United States Treasury.

10. All funds under this Plan that are to be distributed to the United States Treasury, including those specified in footnote one and paragraph nine of this Plan, shall be distributed to the United States Treasury via the Commission. The District Court Clerk's Office shall pay such funds to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312. The payment shall be accompanied by a letter identifying Fabri as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that such funds are being distributed pursuant to this Plan. The Clerk shall simultaneously transmit a photocopy of such payment and letter to the Commission's counsel in this action, to the attention of Bradford E. Ali, Senior Counsel, 73 Tremont Street, Suite 600, Boston, MA 02108.

IV. Plan Comment Period

11. Any person and/or entity wishing to comment on or object to this Plan must do so in writing by filing their comments with the Court within thirty (30) days from the date this Plan is filed with the Court, with a copy to be served, by first-class mail, upon the Commission to the attention of Bradford E. Ali, Senior Counsel, 73 Tremont Street, Suite 600, Boston, MA 02108, (617) 424-5900, ext. 118.

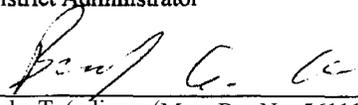
12. The Commission may respond to any comments so filed within thirty (30) days from the last date a comment may be filed, with copies of any such response to be filed with the Court and served by first-class mail upon counsel for Fabri, the District Court Clerk's Office, and all persons and/or entities who submitted comments to the Plan pursuant to Paragraph 11 above.

13. If the Court deems it necessary or appropriate, it will hold a hearing on the Commission's Plan.

Respectfully submitted,

**Juan Marcel Marcelino**  
**District Administrator**

By:

  
\_\_\_\_\_  
Luke T. Cadigan (Mass Bar No. 561117)  
Senior Trial Counsel

Bradford E. Ali (Mass. Bar No. 649541)  
Senior Counsel

Attorneys for Plaintiff  
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Boston, MA 02108  
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Dated: August 22, 2003

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,     )  
  Plaintiff,     )  
  v.     )     C.A. No. 03-CV-10658 (DPW)  
GEOFFREY E. FITTS AND     )  
WILLIAM D. FABRI, SR.,     )  
  Defendants.     )

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
MEMORANDUM IN SUPPORT OF ITS MOTION FOR APPROVAL  
OF PLAINTIFF'S PROPOSED PLAN FOR DISTRIBUTION OF FUNDS

I.     INTRODUCTION

Plaintiff Securities and Exchange Commission ("Commission") respectfully submits this Memorandum of Law in support of its Motion for Approval of Plaintiff's Proposed Plan for Distribution of Funds (the "Plan").

II.    PROCEDURAL BACKGROUND

On April 10, 2003, the Commission filed an action for a permanent injunction and other equitable relief against a former director of MetroWest Bank ("MetroWest"), Defendant Geoffrey E. Fitts ("Fitts"), and Fitts' friend and business associate, Defendant William D. Fabri, Sr. ("Fabri"). See 1 3 of the Declaration of Bradford E. Ali filed herewith as Exhibit A ("Ali Declaration"). The Commission alleged that Fitts, who was aware that MetroWest planned to be acquired by another bank, told Fabri about the impending takeover on May 21 and 22, 2001. [Ali Declaration T 3]. The Commission further alleged that on May 23, 2001, Fabri bought 3,000

shares of MetroWest common stock while in possession of material, nonpublic information concerning MetroWest, and caused another person (hereinafter referred to as "the Second Trader") to purchase 325 shares of MetroWest, [Ali Declaration T 3]. The Second Trader purchased 100 shares of MetroWest on May 21, 2001 and 225 shares of MetroWest on May 25, 2001. [Ali Declaration T 3]. Banknorth Group, Inc. ("Banknorth") announced its plans to acquire MetroWest on June 11, 2001, and the share price of MetroWest increased. [Ali Declaration I(3)]. The Commission alleged that Fabri profited by \$10,710 and the Second Trader profited by \$1,130 as a result of their trading. [Ali Declaration T 3]. The Commission further alleged that such insider trading by Fabri violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated thereunder [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5]. [Ali Declaration 13].

On April 21, 2003, U.S. District Court Judge Douglas P. Woodlock entered a final judgment against Fabri, to which Fabri consented without admitting or denying the allegations in the Complaint. [Ali Declaration T 4]. As part of the final judgment, Judge Woodlock: 1) permanently enjoined Fabri from violating Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder; 2) ordered Fabri to disgorge \$11,840 in profits gained as a result of the conduct alleged in the Complaint (\$10,710 for Fabri's trading and \$1,130 for the Second Trader's trading), together with prejudgment interest in the amount of \$1,278.65 (\$1,156.62 for Fabri's trading and \$122.03 for the Second Trader's trading); and, 3) ordered Fabri to pay a civil penalty in the amount of \$11,840 (\$10,710 for Fabri's trading and \$1,130 for the Second Trader's trading), pursuant to Section 21A of the Exchange Act. [Ali Declaration T4].

Fabri satisfied the disgorgement, prejudgment interest and penalty obligations under the

final judgment entered against him by paying \$24,958.65 to the Clerk of this Court for deposit into the Court Registry Investment System (the "CRIS"). Those funds remain in the CRIS pending further order of this Court. [Ali Declaration 151].

5. The final judgment permits the Commission, by motion, to propose a plan to distribute those funds subject to the Court's approval, and pursuant to the Fair Fund provision of Section 308(a) of the Sarbanes-Oxley Act of 2002. [Ali Declaration 16].

#### 111. STATEMENT OF FACTS

##### A. Background

A total of 6013 shares of MetroWest stock was sold on May 23, 2001. [Ali Declaration 7]. What follows is a list of the persons (with names and addresses) who sold shares of MetroWest stock on May 23, 2001, followed by the number of MetroWest shares each person(s) sold, and followed by the percentage of shares each person sold (on a pro rata basis) in relation to the 6013 shares sold on May 23, 2001:

Name and Address	<u># of shares sold</u>	<u>Percentage</u>
Gholam Gamini P.O. Box 81386 Wellesley, MA 02481-2845	240	3.99%
David and Brenda Breen 14 Richmond Street West Roxbury, MA 02132-2522	600	9.97%
Neil Alan and Judith Eve Grand 45 West 60 <sup>th</sup> Street, Apt. 5D New York, NY 10023	600	9.97%
Eleanor M. Anghinetti 17 Wheaton Avenue Rehobeth, MA 02769	1023	17.01%

Richard J. Szeto 82 Davis Avenue Brookline, MA 02146	150	2.49%
Edward A. and Irene G. Plumley 6 Amy Road Framingham, MA 01701	400	6.65%
Harold L. and Wanda M. Baker 594 Northwest Avenue Tallmadge, OH 44278-1202	3000	49.89%

[Ali Declaration 17]. If the foregoing persons did not sell their MetroWest stock on May 23, 2001, they collectively would have profited by \$21,600.62 after the June 11, 2001 announcement that Banknorth was going to acquire MetroWest. [Ali Declaration 17].

A total of 18,943 shares of MetroWest stock were sold on May 21, 2001 by 16 persons/entities and 3,685 shares of MetroWest stock were sold on May 25, 2001 by six persons/entities. [Ali Declaration 18]. Knight Securities L.P. ("Knight"), a broker-dealer registered with the Commission whose address is 525 Washington Boulevard in Jersey City, New Jersey 07310, sold the 100 shares of Metro West stock to the Second Trader on May 21, 2001 and sold the 225 shares of MetroWest stock to the Second Trader on May 25, 2001. [Ali Declaration 18].

**B. Definitions**

1. "Fabri Disgorgement Fund" shall mean the \$22,576.62 Fabri paid the Clerk of this Court for deposit into the CRIS (which consists of \$10,710 in disgorgement for his trading, \$1,156.62 in prejudgment interest for his trading, a \$10,710 civil penalty for his trading) and 90% of the income and interest generated while the \$22,576.62 was in the CRIS .

2. "Fabri Eligible Claimants" shall mean all persons and/or entities who sold MetroWest common stock on May 23, 2001. The Fabri Eligible Claimants, whose names and addresses are listed in Section 3.A. above, are: 1) Gholam Gamini; 2) David and Brenda Breen; 3) Neil Alan and Judith Eve Grand; 4) Eleanor M. Anghinetti; 5) Richard J. Szeto; 6) Edward A. and Irene G. Plumley; and, 7) Harold L. and Wanda M. Baker.

3. The "Second Trader Disgorgement Fund" shall mean the \$1,252.03 Fabri paid the Clerk of this Court for deposit into the CRIS (which consists of \$1,130 in disgorgement for the Second Trader's trading and \$122.03 in prejudgment interest for the Second Trader's trading) and 90% of the income and interest generated while the \$1,252.03 was in the CRIS.'

4. The "Second Trader Eligible Claimant" shall mean Knight, which sold 100 shares of MetroWest stock to the Second Trader on May 21, 2001, and 225 shares of MetroWest stock to the Second Trader on May 25, 2001.

#### IV. ARGUMENT

The Commission respectfully requests that the Court distribute Fabri's disgorgement, prejudgment interest and civil penalty in the manner set forth in greater detail below. The Commission submits that the Fabri Disgorgement Fund and the Second Trader Disgorgement Fund be distributed in accordance with the terms of the Plan to persons who were contemporaneous sellers of the securities that Fabri purchased and caused to be purchased while,

' As explained below, if the penalty associated with the Second Trader's trading were included in the Second Trader Disgorgement Fund, the total amount of funds to be returned to the "Second Trader Eligible Claimant" (see definition below) would exceed the amount of money in which the Second Trader Eligible Claimant lost as a result of its sales of MetroWest stock to the Second Trader. Accordingly, the Commission submits that such funds associated with the penalty for the Second Trader's trading, in the amount of \$1,130, should be distributed to the United States Treasury.

according to the Complaint, in possession of the material nonpublic information.'

Under *SEC v. Certain Unknown Purchasers*, 817 F.2d 1018 (2d Cir. 1987), *cert denied*, 108 S. Ct. 1013 (1988) and *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989), the Commission has been vested with broad discretion in fashioning distribution plans for funds similar to the Plan in this case. This discretion "includ[es] the flexibility to decide that certain groups of claimants would receive payments and others would not." *Levine*, 881 F.2d at 1182. Furthermore, Section 308(a) of the Sarbanes-Oxley Act of 2002 provides that if the Commission obtains an order requiring disgorgement against any person for a violation of the federal securities laws, and the Commission also obtains a civil penalty against that person, the penalty shall, on the motion of the Commission, be added to and become part of the disgorgement for the benefit of victims.

The Fabri Eligible Claimants sold 6,013 shares of MetroWest stock on the same day Fabri bought 3,000 shares of MetroWest stock. If the Fabri Eligible Claimants had not sold that stock, they collectively would have realized \$21,600.62 in profits. [All Declaration T 7]. The total amount of Fabri's disgorgement and penalty equals \$21,420. It therefore would be appropriate to distribute that disgorgement and penalty, along with interest (i.e., the Fabri Disgorgement Fund) to the Fabri Eligible Claimants. As contemporaneous traders, the Fabri Eligible Claimants sold near in time to when Fabri bought MetroWest stock, and the amount that each of them would receive under the Plan is nearly exactly what each Fabri Eligible Claimant would have realized had they not sold their

<sup>2</sup> The "contemporaneous trader" rule adopted in the Second Circuit and used in recent Commission disgorgement plans, allows investors who traded "contemporaneously" with the insider trader to recover disgorged profits. *See, e.g., Wilson v. Comtech Telecommunications Corp.*, 648 F.2d 88, 94 (2d Cir. 1981) ("investors trading contemporaneously with the insider"); *Elkind v. Liggett & Myers, Inc.*, 635 F.2d 156, 168-73 (2d Cir. 1980) (disgorged insider trading profits to be distributed to investors who bought Liggett shares over a contemporaneous trading period); *Shapiro v. Merrill Lynch, Pierce, Fenner and Smith*, 495 F.2d 228, 237 (2d Cir. 1974) (damages available to person who traded "during the same period" as defendants without knowledge of the material inside information). *See generally* Flynn, SEC Distribution Plans In Insider Trading Cases, 48 Bus. Law. 107 (1992).

MetroWest stock on May 23, 2001.

As pointed out above, a total of 18,943 shares of MetroWest stock were sold on May 21, 2001 by 16 persons/entities and 3,685 shares of MetroWest stock were sold on May 25, 2001 by six persons/entities. If the Second Trader Disgorgement Fund were distributed among all of those who sold stock on May 21 and May 25, 2001, each person/entity would receive a very insignificant amount of money, and it would require substantial resources to distribute those funds in that manner. The Commission submits that the better approach would be to distribute the Second Trader Disgorgement Fund to Knight, which sold all 325 shares to the Second Trader. The Second Trader Disgorgement Fund (consisting of the Second Trader's disgorgement and interest) would make Knight whole for its sales of Metro West stock on May 21 and 25, 2001?

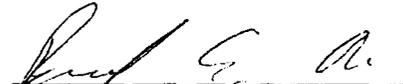
V. CONCLUSION

The Commission respectfully requests that its Motion for Approval of Plaintiffs Proposed Plan for Distribution of Funds be granted.

Respectfully submitted,

Juan Marcel Marcelino  
District Administrator

By:



Luke T. Tadiagan (Mass Bar No. 561117)  
Senior Trial Counsel

Bradford E. Ali (Mass. Bar No. 649541)  
Senior Counsel

<sup>3</sup> The Commission submits that the penalty associated with the Second Trader's trading (in the amount of \$1,130) should be distributed to the United States Treasury. If the penalty were to be distributed to all 21 persons/entities who sold MetroWest stock on May 21 and 25, 2001, they would each receive an insignificant amount of money and it would require substantial resources to distribute those funds in that manner.

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SECURITIES AND EXCHANGE  
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Dated: August 22, 2003

CERTIFICATE\_ OF SERVICE

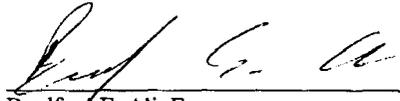
I hereby certify that on August 22, 2003, I caused copies of the foregoing document to be served on counsel for the defendants, all by first class mail at the addresses indicated below:

Counsel for Defendant Fitts

William J. Cintolo, Esq.  
Cosgrove, Eisenberg and Kiley, P.C.  
One International Place, Suite 1820  
Boston, MA 02110-2600

Counsel for Defendant Fabri

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Lynnfield Woods Office Park  
210 Broadway, Suite 201  
Lynnfield, MA 01940-2351

  
\_\_\_\_\_  
Bradford E. Ali, Esq.

# EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,     )  
  Plaintiff,     )  
  v.     )     C.A. No\_ 03-CV-10658 (DPW)  
GEOFFREY E. FITTS AND     )  
WILLIAM D. FABRI, SR.,     )  
  Defendants.     )

DECLARATION OF BRADFORD E. ALI IN SUPPORT OF PLAINTIFF  
SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR APPROVAL  
OF PLAINTIFF'S PROPOSED PLAN FOR DISTRIBUTION OF FUNDS

1. I am employed by the Plaintiff Securities and Exchange Commission (the "Commission") as a Senior Counsel in its Boston District Office. Along with lead counsel Luke Cadigan, I represent the Commission in this action. I submit this declaration in support of the Commission's Motion for Approval of Plaintiff's Proposed Plan for Distribution of Funds.

2. This declaration is based on information that the Commission staff (the "Staff") has obtained during the course of the investigation and litigation of this matter. In preparing this declaration, I reviewed the case files related to this action.

3. On April 10, 2003, the Commission filed an action for a permanent injunction and other equitable relief against a former director of MetroWest Bank ("MetroWest"), Defendant Geoffrey E. Fitts ("Fitts"), and Fitts' friend and business associate, Defendant William D. Fabri, Sr. ("Fabri"). The Commission alleged that Fitts, who was aware that MetroWest planned to be acquired by another bank, told Fabri about the impending takeover on May 21 and 22, 2001. The

Commission further alleged that on May 23, 2001, Fabri bought 3,000 shares of MetroWest common stock while in possession of material, nonpublic information concerning MetroWest, and caused another person (hereinafter referred to as "the Second Trader") to purchase 325 shares of MetroWest. The Second Trader purchased 100 shares of MetroWest on May 21, 2001 and 225 shares of MetroWest on May 25, 2001. Banknorth Group, Inc. ("Banknorth") announced its plans to acquire MetroWest on June 11, 2001, and the share price of MetroWest increased. The Commission alleged that Fabri profited by \$10,710 and the Second Trader profited by \$1,130 as a result of their trading. The Complaint further alleged that such insider trading by Fabri violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 10b-5 promulgated thereunder [15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5].

4. On April 21, 2003, U.S. District Court Judge Douglas P. Woodlock entered a final judgment against Fabri, to which Fabri consented without admitting or denying the allegations in the Complaint. As part of the final judgment, Judge Woodlock: 1) permanently enjoined Fabri from violating Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder; 2) ordered Fabri to disgorge \$11,840 in profits gained as a result of the conduct alleged in the Complaint (\$10,710 for Fabri's trading and \$1,130 for the Second Trader's trading), together with prejudgment interest in the amount of \$1,278.65 (\$1,156.62 for Fabri's trading and \$122.03 for the Second Trader's trading); and, 3) ordered Fabri to pay a civil penalty in the amount of \$11,840 (\$10,710 for Fabri's trading and \$1,130 for the Second Trader's trading), pursuant to Section 21A of the Exchange Act.

5. Fabri satisfied the disgorgement, prejudgment interest and penalty obligations under the final judgment entered against him by paying \$24,958.65 to the Clerk of this Court for

deposit in an interest bearing account into the Court Registry Investment System (the "CRIS"). The final judgment specifies that those funds, together with any interest and income earned thereon, are to remain in the CRIS pending further order of this Court. The final judgment further provides that the Clerk is directed to deduct 10% of the interest and income earned on those funds in the CRIS (not to exceed that authorized by the Judicial Conference of the United States).

6. The final judgment permits the Commission, by motion, to propose a plan to distribute those funds subject to the Court's approval, and pursuant to the Fair Fund provision of Section 308(a) of the Sarbanes-Oxley Act of 2002.

7. During the course of the investigation that led to the filing of the Complaint in this action, the Staff obtained trading data identifying all persons and entities who bought and sold MetroWest common stock during the period March 1, 2001 through June 11, 2001. That data includes, among other things, the number of shares of MetroWest stock each person and/or entity bought and sold (each day), including at what price. Based on my review of that data, I determined that a total of 6013 shares of MetroWest stock was sold on May 23, 2001. What follows is a list of the persons (with names and addresses) who sold shares of MetroWest stock on May 23, 2001, followed by the number of MetroWest shares each person(s) sold, and followed by the percentage of shares each person sold (on a pro rata basis) in relation to the 6013 shares sold on May 23, 2001:

<u>Name and Address</u>	<u># of shares sold</u>	<u>Percentage</u>
Gholam Gamini P.O. Box 81386 Wellesley, MA 02481-2845	240	3.99%

David and Brenda Breen 14 Richmond Street West Roxbury, MA 02132-2522	600	9.97%
Neil Alan and Judith Eve Grand 45 West 60' Street, Apt. 5D New York, NY 10023	600	9.97%
Eleanor M. Anghinetti 17 Wheaton Avenue Rehobeth, MA 02769	1023	17.01%
Richard J. Szeto 82 Davis Avenue Brookline, MA 02146	150	2.49%
Edward A. and Irene G. Plumley 6 Amy Road Framingham, MA 01701	400	6.65%
Harold L. and Wanda M. Baker 594 Northwest Avenue Tallmadge, OH 44278-1202	3000	49.89%

If the foregoing persons did not sell their MetroWest stock on May 23, 2001, they collectively would have profited by \$21,600.62 after the June 11, 2001 announcement that Banknorth was going to acquire MetroWest.

8. Based on my review of the MetroWest trading data, I determined that 18,943 shares of MetroWest stock were sold on May 21, 2001 by 16 persons/entities and 3,685 shares of MetroWest stock were sold on May 25, 2001 by six persons/entities. I was also able to determine that Knight Securities L.P., a broker-dealer registered with the Commission whose address is 525 Washington Boulevard in Jersey City, New Jersey 07310, sold the 100 shares of MetroWest stock to the Second Trader on May 21, 2001 and sold the 225 shares of MetroWest

stock to the Second Trader on May 25, 2001.

Signed and sworn to this 22<sup>nd</sup> day of August, 2003, in Boston, Massachusetts.

  
Bradford E. Ali

