

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**JAMES L. DOUGLAS a/k/a JAMES L.
COOPER,**

Defendants.

Civil Action No. C82-29

Judge Jack Zouhary

DISTRIBUTION PLAN

I. INTRODUCTION

1. On January 18, 1982, the Securities and Exchange Commission (the “Commission”) filed a complaint against James L. Douglas a/k/a James L. Cooper (the “Defendant”), alleging that he had raised more than \$7.5 million by offering and selling unregistered securities to more than 300 investors. The securities took the form of interests in multiple oil and gas partnerships. The Defendant made multiple misrepresentations and omitted material information relating to the costs of drilling and refurbishing wells, his financial contributions to the partnerships, the involvement of related parties in transactions, and sharing of revenues with persons who solicited investments.

2. Simultaneously with the filing of the complaint, the Court entered a Final Judgment of Permanent Injunction with the Defendant’s consent, leaving open the issue of monetary relief. On August 26, 1983, the Court entered another judgment by consent, directing

the Defendant to disgorge \$200,000 under a three-year payment plan. The deadline for the final payment was August 26, 1986.

3. From 1984 to 1986, the Defendant missed two out of the three installment deadlines and paid only \$121,975.29 of the \$200,000, leaving an unpaid balance of \$78,024.71. On August 8, 1988, this Court found the Defendant in contempt of the three-year payment plan. The amount the Defendant paid, plus \$20,000 frozen in the related lawsuit, *SEC v. James R. Crawford*, No. C 79-353 (N.D. Ohio), and accrued interest, was placed into a disgorgement fund in a court registry account. Total investor losses were estimated at \$7.5 million. Two distributions, totaling \$155,327.82, were made pursuant to Court Orders dated October 18, 1985 and September 26, 1988 (collectively, the “First Distribution”).¹

4. The SEC filed a motion for civil contempt on January 23, 2012. After an evidentiary hearing and briefing, the Court found the Defendant in contempt and, on August 20, 2012, ordered the payment of the entire outstanding judgment of \$78,024.71, plus post-judgment interest of approximately \$1.78 million at the statutory rate of 10.74% from the date of the entry of the judgment in 1983. In December 2013, Defendant transferred \$1.9 million to the registry of the Court, in full satisfaction of the outstanding judgment and post-judgment interest (the “Distribution Fund”).

5. On December 24, 2014, the Court appointed Damasco & Associates LLP as tax administrator (“Tax Administrator”)² to execute all income tax reporting requirements, including

¹ \$121,535.36 was distributed by Court order on October 18, 1985, and \$33,792.46 was distributed by Court order dated September 26, 1988.

² Dkt. No. 54. As of October 1, 2016, Damasco & Associates LLP became a part of Miller Kaplan Arase LLP. The firm’s engagement with the Commission and its ability to carry out its duties as appointed Tax Administrator for this matter has not changed.

the preparation and filing of tax returns, with respect to funds under this Court's jurisdiction in this case.

6. On June 15, 2015, the Court appointed Kurtzman Carson Consultants, LLC ("KCC") as distribution agent ("Distribution Agent")³ to assist in overseeing the administration and distribution of the Distribution Fund in coordination with Commission staff, pursuant to the terms of a plan of distribution ("Distribution Plan"), to be approved by this Court.

II. DEFINITIONS

7. As used in this Distribution Plan, the following definitions shall apply:
- a. "**Certification Form**" means the form that will be mailed to each Eligible Recipient in order to confirm the First Distribution Payment Amount, the correct name of the payee to which the Eligible Recipients' check will be issued, and the mailing address for distribution. The Certification Form will also collect Eligible Recipients' Social Security or Tax Identification Numbers and any other information needed relating to the tax treatment of any distribution.
 - b. "**Days**" means calendar days, unless otherwise specified herein.
 - c. "**Dispute**" means a written objection by an Eligible Recipient to the amount the Distribution Agent has recorded as the Eligible Recipient's First Distribution Payment Amount.
 - d. "**Distribution Agent**" refers to KCC (collectively, with all its employees, agents, consultants, and independent contractors), which has been

³ Dkt. No. 58.

appointed by the Court to administer and distribute the Distribution Fund in accordance with the terms of the Distribution Plan.

- e. **“Distribution Fund”** means the \$1.9 million paid to the registry of the Court by the Defendant in full satisfaction of the outstanding judgment and post-judgment interest.
- f. **“Distribution Payment”** is the *pro rata* amount of the Net Distribution Fund to be paid to each Eligible Recipient as calculated in accordance with the Plan of Allocation, attached as Exhibit 1.
- g. **“Distribution Plan”** means the Distribution Plan in the form approved by the Court.
- h. **“Distribution Plan Notice”** means a written notice from the Distribution Agent to each of the injured investors who received distribution payments in the First Distribution, as set forth in paragraphs 11 through 16 below.
- i. **“Eligible Recipients”** are those injured investors who received a payment in connection with the First Distribution or their lawful heirs or successors. The legal heirs or successors of the Eligible Recipients will be eligible to participate in the distribution of the Net Distribution Fund subject to the conditions detailed in paragraph 17 below.
- j. **“Final Determination Notice”** means the Distribution Agent’s written reply to each Eligible Recipient who timely submits a Dispute. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the Eligible Recipient’s Dispute.

- k. **“First Distribution Payment Amount”** means the total amount previously paid to each Eligible Recipient in the First Distribution.
- l. **“Net Distribution Fund”** means the Distribution Fund, plus any interest earned, less any amounts expended for court fees, tax obligations, and fees and expenses of the Distribution Agent and the Tax Administrator in accordance with this Distribution Plan.
- m. **“Notice Publication”** means the publication of the Distribution Plan Notice, or a notice closely resembling the Distribution Plan Notice, in print or internet media, in a manner deemed appropriate by the Distribution Agent and not unacceptable to the Commission staff.
- n. **“Person”** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.
- o. **“Plan of Allocation”** means the methodology by which a Distribution Payment is calculated. The Plan of Allocation is set forth in Exhibit 1 and attached hereto.
- p. **“Tax Administrator”** means Damasco & Associates LLP,⁴ the firm appointed by the Court on December 24, 2014 as the Tax Administrator in this action.

⁴ *Supra* fn. 2.

III. NO CLAIMS PROCESS

8. The Distribution Agent has identified 243 Eligible Recipients. Because the information obtained from various sources was consistent and has been validated, the Distribution Agent does not believe it is necessary to have a claims process to try and identify additional injured investors. As a result, the Distribution Fund will not be distributed according to a claims process. Instead, the Distribution Payment will be calculated pursuant to the Plan of Allocation, attached as Exhibit 1, using a methodology that is based on the payments to investors from the First Distribution.

IV. ADMINISTRATION OF THE DISTRIBUTION FUND

A. Notice to Eligible Recipients and Request for Certification

12. The Distribution Agent will establish and maintain a website devoted solely to the Distribution Fund (the “Distribution Fund Website”). The Distribution Fund Website, located at www.JamesDouglasDistributionFund.com, will make available a copy of the Distribution Plan Notice and the approved Distribution Plan, and provide information regarding eligibility requirements for participation in the distribution. The Distribution Fund Website will also include the Certification Form and such other information covering the process or substance that the Distribution Agent believes will be beneficial to Eligible Recipients in a downloadable format. The Commission staff retains the right to review and approve any material posted on the Distribution Fund Website.

13. The Distribution Agent will provide a copy of the Distribution Plan and Distribution Plan Notice to the staff of the Commission who will post the Distribution Plan and

Distribution Plan Notice on the Information for Harmed Investors page⁵ on www.sec.gov and establish a link to the Distribution Fund Website.

14. The Distribution Agent will establish and maintain a toll-free telephone number for Eligible Recipients to call to speak to a live representative during its regular business hours, 8:00 am to 5:00 pm, Pacific Standard Time, or outside of such hours, to hear pre-recorded information about the Distribution Fund. The Distribution Agent will advise the Commission staff of the toll-free telephone number. The Distribution Agent will also establish and maintain a traditional mailing address and an email address to enable Eligible Recipients to correspond with the Distribution Agent.

15. Within 21 days of the approval of the Distribution Plan, the Distribution Agent will mail each of the 243 Eligible Recipients a Distribution Plan Notice that contains (a) a characterization of the distribution; (b) a link to the Distribution Plan posted on the Distribution Fund Website and instructions for how to request a copy of or download the Distribution Plan; (c) a record of the Eligible Recipient's First Distribution Payment Amount; (d) a statement of the Eligible Recipient's *pro rata* share of the Net Distribution Fund calculated pursuant to the methodology set forth in the Plan of Allocation; (e) a statement of the Eligible Recipient's approximate Distribution Payment; (f) instructions for submitting to the Distribution Agent any Dispute to the First Distribution Payment Amount; (g) the Certification Form; (h) notice of the requirement and time period allotted for the return of the Certification Form and the opportunity to respond with any Dispute; and (i) contact information for the Distribution Agent so Eligible Recipients may contact the Distribution Agent with questions regarding the distribution.

⁵ The harmed investors page can be located at <https://www.sec.gov/divisions/enforce/claims.htm>.

16. The Certification Form must be signed by the Eligible Recipient under penalty of perjury under the laws of the United States. The Certification Form must be executed by the Eligible Recipient, unless the Distribution Agent accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Eligible Recipient's behalf. Those authorized to act on behalf of Eligible Recipients will be eligible to participate in the distribution of the Net Distribution Fund to the same extent the original investor would have been eligible under the terms of the Distribution Plan. A request by a surviving beneficiary or alternate payee of a deceased Eligible Recipient must be supported by proper documentation validating their identity and status as the lawful beneficiary of the Eligible Recipient. At a minimum, the surviving beneficiary must submit a copy of a death certificate to demonstrate the Eligible Recipient is deceased. He or she is also required to provide additional documentation including, but not limited to, a Last Will and Testament, estate records, Letters Testamentary, letters of administration, evidence of probate and/or any other testamentary provisions of the deceased person to demonstrate their status as beneficiary. Certified copies are not required. The Distribution Agent retains the discretion to determine whether proper documentation has been submitted, in consultation with the Commission staff.

17. The Distribution Agent will review all Certification Forms. Each Eligible Recipient will have the burden of proof to establish their identity as an Eligible Recipient. The Distribution Agent will have the right to request, and the Eligible Recipient will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

18. If an Eligible Recipient fails to return the Certification Form within forty-five (45) days from the mailing of the Distribution Plan Notice, the Distribution Agent will then make no

fewer than two (2) attempts to contact the Eligible Recipient by mail, phone, and/or email. The second attempt will in no event take place more than fifty-five (55) days from the mailing of the Distribution Plan Notice. If an Eligible Recipient fails to respond to the Distribution Agent's contact attempts as described in this paragraph, the Distribution Agent, after consultation with the Commission staff, may remove such Eligible Recipient from the distribution and the allocated distribution amount will be distributed *pro rata* to the remaining Eligible Recipients.

19. The Distribution Agent will forward any returned mail for which an updated address is provided or obtained. The Distribution Agent will attempt to locate any Eligible Recipients whose Distribution Plan Notice is returned by the United States Postal Service ("USPS") as "undeliverable" and will document all such efforts. The Distribution Agent will utilize all means reasonably available, including Advanced Investor Location services and CLEAR, to locate Eligible Recipients and to obtain updated addresses in response to undeliverable notices. The Distribution Agent will then resend the Distribution Plan Notice to the Eligible Recipient's new address within thirty (30) days of receipt of the returned Distribution Plan Notice. If the Distribution Plan Notice is returned as undeliverable again, and the Distribution Agent, despite all reasonable efforts, is unable to find an Eligible Recipient's correct address, the Distribution Agent, after consultation with the Commission staff, may remove such Eligible Recipient from the distribution and the allocated distribution amount will be distributed *pro rata* to the remaining Eligible Recipients.

20. Within forty-five (45) days after the mailing of the Distribution Plan Notice, any Person who does not receive a Distribution Plan Notice, and believes that he, she, or it should have after becoming aware of the Distribution Plan (*e.g.*, through other investors or on the Distribution Fund Website), must submit documentation to the Distribution Agent to establish

that the Person is in fact eligible to receive a Distribution Plan Notice. The Distribution Agent will send the Person a Distribution Plan Notice within twenty-one (21) days of receiving the Person's documentation, if the Distribution Agent determines that the Person should have received a Distribution Plan Notice.

B. Dispute Procedures

21. Eligible Recipients will be directed in the Distribution Plan Notice to submit any Dispute directly to the Distribution Agent and not to contact the Commission, the Court, or the Clerk of the Court. The Distribution Agent will notify the Commission immediately upon receipt of any Disputes so that such Disputes may be addressed timely and efficiently.

22. Eligible Recipients will have thirty (30) days from the mailing of the Distribution Plan Notice to submit a written communication detailing any Dispute, along with any supporting documentation, to the Distribution Agent. The scope of any Dispute will be limited to the calculation of an Eligible Recipient's First Distribution Payment Amount. The Distribution Agent will investigate the Dispute, and such investigation will include a review of the written Dispute as well as any supporting documentation. Within thirty (30) days of receipt of the Dispute, the Distribution Agent will send its Final Determination Notice to notify the Eligible Recipient of its resolution of the Dispute, which will be final. If no Disputes are received, the Distribution Agent will notify the Commission staff of the same.

C. Payment File

23. In order to disburse the Distribution Fund, the Distribution Agent will compile and submit a list of payees (including payee names, addresses, and Social Security or Tax Identification Numbers) and payment amounts (the "Payment File") to the Commission staff no later than one hundred and twenty (120) business days after the mailing of the Distribution Plan

Notice. The Payment File shall be accompanied by a reasonable assurances letter as to the completeness and accuracy of the Payment File.

24. Prior to distribution, the Distribution Agent shall establish a reserve to permit payment of the remaining expenses of the distribution, including court fees and expenses, anticipated tax obligations and the fees and expenses of the Tax Administrator and anticipated fees and expenses of the Distribution Agent.

25. The Distribution Agent shall provide the final payee list to the Commission staff, and upon review, the Commission staff shall petition the Court to transfer all necessary funds in the court registry account to the Distribution Agent for distribution pursuant to the Distribution Plan. The final payee list shall, upon request, be made available to the Court under seal.

26. Should the total amount of the Distribution Payments of all Eligible Recipients exceed the Net Distribution Fund, the Distribution Agent will distribute funds upon a *pro rata* distribution formula. This formula will be the fraction of the Distribution Payment of each Eligible Recipient divided by the aggregate Distribution Payments of all Eligible Recipients.

27. The Distribution Agent may aggregate accounts held by a Person in the same legal capacity in determining Distribution Payments.

D. Establishment of the Escrow and Distribution Accounts

28. Prior to disbursement of the Distribution Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank (“Bank”), not unacceptable to Commission staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Court registry account, which will be held in the Escrow Account until the time of distribution. The

Distribution Agent will also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linked checking and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Recipients. The accounts shall be in the name of and bearing the Employer Identification Number of the Distribution Fund as custodian for the distributees of the Distribution Fund. The name of each account will be in the following form: “SEC v. James L. Douglas a/k/a James L. Cooper as custodian, for the benefit of investors allocated a distribution from the Distribution Fund in SEC v. James L. Douglas a/k/a James L. Cooper.”

29. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States (“U.S.”) Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Recipients and tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the U.S. government.

30. In consultation with the staff of the Commission, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Distribution Fund.

31. All interest earned will accrue for the benefit of the Distribution Fund and all costs associated with the Escrow Account and Distribution Account will be paid by the Distribution Fund.

32. Upon transfer from the Court registry the assets of the Distribution Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of checks. All Distribution Fund checks presented for payment or electronic transfers will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

33. The Distribution Agent will provide copies of the bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and will assist the Tax Administrator in obtaining any other statements, as necessary.

E. Distribution

34. Following the Court’s approval of the Commission’s petition for the authority to distribute the funds from the Distribution Fund as provided in the Distribution Plan, the Court may issue an order to the Clerk of the Court to transfer the Net Distribution Fund to the account or accounts established by the Distribution Agent.

35. The Net Distribution Fund will be distributed to Eligible Recipients as provided under the terms of the Distribution Plan. The Plan of Allocation contained in Exhibit 1 to this Distribution Plan, will be used to determine the amount of each Eligible Recipient’s Distribution Payment. The Distribution Agent shall commence the distributions to all Eligible Recipients as promptly as possible following the transfer of the funds.

36. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this check-cashing period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below in paragraphs 41-45 below.

37. Payments to Eligible Recipients will be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that checks will be void after ninety (90) days and cannot be reissued after 90 days from the date the original check was issued;
- c. A statement that reissued checks will expire on the later of 90 days from the date of the original check or 45 days from the date of the reissued check;
- d. A statement that the tax treatment of the distribution is the responsibility of each Eligible Recipient and that the Eligible Recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
- e. Contact information for the Distribution Agent for questions regarding the Distribution Payment.

40. Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Distribution Fund established to compensate investors for harm suffered as a result of securities law violations.

F. Reissues and Handling of Returned or Uncashed Checks

41. The Distribution Agent is authorized to reissue checks to Eligible Recipients upon the receipt of a valid, written request from the Eligible Recipient. Such reissued checks will be void at the later of ninety (90) days from issuance of the original check or forty-five (45) days from the reissuance, and in no event will a replacement check be reissued after ninety (90) days from the date of original issuance.

42. The Distribution Agent will research and attempt to locate all Eligible Recipients whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Recipient has the burden of providing the Distribution Agent with any changes to his, her, or its mailing address after submission of the Certification Form. The Distribution Agent will mail a reissued check to the updated address, subject to the time limits detailed herein.

43. In cases where an Eligible Recipient is unable to endorse a Distribution Payment (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Recipient, or a lawful representative, for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If such change is properly documented in the sole discretion of the Distribution Agent, the Distribution Agent will issue an appropriately reissued Distribution Payment, subject to the time limits detailed herein.

44. The Distribution Agent will make reasonable efforts to contact Eligible Recipients to follow-up on the status of uncashed Distribution Payments 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 reissue such checks, subject to the time limits detailed herein.

45. The Distribution Agent will work with the Bank to obtain information about uncashed checks, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible.

G. Responsibilities of the Distribution Agent

46. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Distribution Plan. This will include, among other things, obtaining updated mailing information for Eligible Recipients as necessary, preparing accountings, cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, and disbursing the Distribution Fund in accordance with the Distribution Plan.

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

48. The Distribution Agent may extend any procedural deadline contained in the Distribution Plan for good cause shown, if agreed upon by the staff of the Commission.

49. The Distribution Agent is authorized to enter into agreements with institutions (“Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided such Institutions are not excluded pursuant to other provisions of the Distribution

Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

50. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Distribution Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties). The Distribution Agent's reasonable fees and expenses associated with distributing the Distribution Fund shall be paid from the Distribution Fund, after review and approval of the invoice by the Commission staff and approval of the Court.

51. The Distribution Agent may be removed at any time by the Court and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the staff of the Commission and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Distribution Fund.

H. Tax Compliance and Responsibilities of the Tax Administrator

52. The Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), 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. Regs. § 1.468B-1 to § 1.468B-5, including, but not limited to:

- a. Obtaining a taxpayer identification number;

- b. Submitting requests for funds from the Distribution Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and
- c. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Distribution Fund.

53. When the Distribution Fund is transferred to the Distribution Agent for distribution, the Distribution Agent will tender to the Tax Administrator funds necessary to pay taxes upon the request of the Tax Administrator.

54. All fees, costs, and expenses of the Tax Administrator will be paid by the Distribution Fund as part of the cost of the administration of the Distribution Fund. Any taxes on interest earned by the Distribution Fund will be paid by the Distribution Fund.

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

I. Post Distribution

57. The Distribution Agent will retain all documents in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. In addition, the Distribution Agent will shut down the Distribution Fund Website established specifically for the administration of the Distribution Fund six (6) months after the closing of the Escrow Account and Distribution Account, or at such earlier time as the Distribution Agent determines with concurrence of the Commission staff.

58. The Distribution Fund will be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred:

- a. All taxes, fees and expenses have been paid;
- b. All remaining funds have been sent to the Commission for transfer to the United States Treasury; and,
- c. A final accounting, appearing on the standard accounting form supplied by the Commission staff, has been submitted by the Distribution Agent, and has been approved by the Court.

J. Reporting and Accounting; Termination of Distribution Fund

59. The Distribution Agent will provide Commission staff with a progress report within twenty (20) days after the end of each quarter. Progress reports shall inform the Commission staff of the activities and status of the Distribution Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Distribution Fund, the value of those account(s), all monies earned or received into the account(s), monies distributed to Eligible Recipients under the Distribution Plan, and any monies expended to satisfy fees, costs, taxes and other expenses incurred. The staff will file the report with the Court.

60. The Distribution Agent will prepare a final report and final accounting, pursuant to and in a format to be provided by the Commission staff, when the Distribution Fund administration is complete. In compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. The Commission staff will file the final report and final accounting with the Court.

61. 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 fees and costs. The final accounting will be submitted by the Commission staff to the Court for approval.

62. Once all of the Distribution Payments and payments for fees and costs have been cashed or voided, any remaining funds will be sent to the Commission for transfer to the United States Treasury.

V. OTHER RIGHTS AND POWERS

63. 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.

64. The Court reserves the right to amend this Distribution Plan from time to time, and retains exclusive jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Distribution Plan.

65. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Distribution Fund, for a pecuniary loss to the Distribution Fund, for any action taken or omitted by the Distribution Agent in connection with the Distribution Plan and all Eligible Recipients will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

Exhibit 1

PLAN OF ALLOCATION

1. The Net Distribution Fund will be allocated on a *pro rata* basis to those investors to whom distribution payments were made (“Eligible Recipients”) pursuant to Court Orders dated October 18, 1985 and September 26, 1988 (collectively, the “First Distribution”).

2. The Distribution Agent has compiled a payment file that identifies each Eligible Recipient who received distribution payments in the First Distribution and the total amount of the Eligible Recipient’s distribution payments.¹

3. Each Eligible Recipient’s *pro rata* share of the Distribution Fund will be calculated by dividing each Eligible Recipient’s total distribution payments in the First Distribution by the total of all distribution payments made to all Eligible Recipients in the First Distribution.²

4. Each Eligible Recipient’s Distribution Payment will be the Eligible Recipient’s *pro rata* share multiplied by the Net Distribution Fund, subject to the condition that no investor shall receive a windfall.

¹ The payment file was compiled from records previously provided to the Court by the Commission in connection with the First Distribution. The payment file will be submitted to the Court under seal, if requested.

² The plan of allocation used in the First Distribution was as follows: “[funds shall] be released for distribution to the investors in the partnerships listed in Exhibit A in accordance with the ratio of each investor’s cash contribution to the total cash contributions of all such investors.” *See* Order dated September 26, 1988. The Commission staff is not currently in possession of records verifying each investor’s cash contribution; therefore, this Plan of Allocation assumes that the First Distribution Payment Amounts were in accordance with the methodology set forth in the Order.