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5 Counsel to the Receiver
Sherwood Partners Inc.

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
COMMISSION,

11 Plaintiff,

12 v.

13 JOHN B. BIVONA; SADDLE RIVER
14 ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES, LLC;
15 FRANK GREGORY MAZZOLA

16 Defendants.

17 SRA I LLC; SRA II LLC, SRA III
18 LLC, FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
19 BIVONA; CLEAR SAILING GFOUP
IV LLC; CLEAR SAILING GROUP V
20 LLC,

21 Relief Defendants.

) Case No. 3:16-cv-1386

) **[PROPOSED] ORDER**
) **APPROVING RECEIVER'S**
) **MOTION FOR APPROVAL**
) **OF A JOINT DISTRIBUTION**
) **PLAN, RETENTION OF**
) **PROFESSIONALS,**
) **DISSOLUTION OF CERTAIN**
) **DEFENDANTS AND RELIEF**
) **DEFENDANTS AND**
) **CONSENT BY THE**
) **RECEIVER TO**
) **PERMANENT INJUNCTION**

) Date: August 31, 2017
) Time: 1:30 PM
) Court: 5
) Judge: Edward M. Chen

1 The Receiver in the above-captioned matter, Sherwood Partners Inc.
2 (“Sherwood”) has submitted to the Court its Motion for Approval of the
3 following requests to the Court; (i) the imposition of the Joint Distribution Plan
4 of the Receiver and Plaintiff SEC; (ii) the retention of certain investment
5 banking professionals to assist the Receiver in valuing and liquidating certain
6 illiquid assets of the Receivership Estate; (iii) the grant of permission to
7 dissolve of certain of the corporate defendants; (iv) and the approval of the
8 consent of the Receiver to the imposition of a permanent injunction over the
9 affairs of the Relief Defendants, in this matter. The Motion for Approval is
10 accompanied by the Receiver’s Memorandum in Support, and the Declarations
11 of Peter Hartheimer and Georgiana Nertea of Sherwood, and further is based
12 upon the reports of the Independent Monitor, DE No’s 54, 60, 74, and 120; the
13 previous quarterly reports of the Receiver, DE No’s 168 and 183; the pleadings
14 on file including the Plaintiff SEC’s Complaint and Application for a
15 Temporary Restraining Order and accompanying declarations and exhibits (DE
16 No’s 1 - 20); and the Plaintiff SEC’s Joint Motion with the Receiver for the
17 Approval of the Plan and any accompanying declarations and affidavits; and
18 the oral argument of the parties at the hearing on August 31, 2017.

19 GOOD CAUSE APPEARING, the Court hereby approves the Joint Plan
20 of Distribution filed by the Receiver and the Plaintiff SEC attached hereto as
21 Exhibit A;

22 GOOD CAUSE APPEARING, the Court hereby approves the
23 Receiver’s requests that it be permitted:

- 24 (1) to retain certain investment banking professionals to assist it in
25 valuing and liquidating certain illiquid assets of the
26 Receivership Estate;
- 27 (2) to dissolve certain of the corporate defendants; and

28

Exhibit A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Case No. 3:16-cv-01386-EMC

Plaintiff,

Proposed Joint Plan of Distribution

v.

JOHN V. BIVONA; SADDLE RIVER
ADVISORS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III LLC;
FELIX INVESTMENTS, LLC; MICHELE
J. MAZZOLA; ANNE BIVONA; CLEAR
SAILING GROUP IV LLC; CLEAR
SAILING GROUP V LLC,

Relief Defendants.

A. Summary of Distribution Plan

The Securities and Exchange Commission (“Commission” or “SEC”) and Sherwood Partners, Inc., the court-appointed receiver (“Receiver”), respectfully submit this proposed Joint Plan of Distribution (the “Plan” or “Distribution Plan”) to distribute funds to investors and creditors harmed as a result of the violations alleged in the Commission’s complaint (DE 1). Pursuant to the October 11, 2016 Order (DE 142, Stipulated Order Appointing Receiver), the Court appointed the Receiver to

1 take possession and control of the assets of certain Defendants¹ and Relief Defendants² and third
 2 party affiliated entities³ (the “Receivership Estate”) and to develop a plan for the administration of
 3 the Receivership Estate.

4 This Plan provides for the determination of investor and creditor claims to assets in the
 5 Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution
 6 of assets as set forth herein. This Plan also provides for the orderly sale of the shares and financial
 7 interests held by the entities in the Receivership Estate and the pro rata distribution of the proceeds to
 8 investors and creditors based upon their net out-of-pocket investments. If there are sufficient
 9 proceeds, investors will receive interest on the principal amount of their investments to compensate
 10 investors for the time value of their money. In the event that the sale of shares or economic interests
 11 in a particular company, generates an excess recovery and the other investors have received the
 12 principal amount of their investments plus interest, then the Receiver will be authorized to propose a
 13 supplemental distribution to those investors who subscribed and/or invested in the shares of the
 14 particular company or contracts for shares of the particular company generating the recovery.
 15
 16

17 **B. Background**

18 The Commission filed its complaint against John V. Bivona (“Bivona”), Frank Mazzola, the
 19 Corporate Defendants, and Relief Defendants in this action on March 22, 2016. It brought this action
 20

21 ¹ Saddle River Advisors LLC (“Saddle River”) and SRA Management, LLC (“SRA Management”),
 22 Saddle River and SRA Management (collectively, the “Corporate Defendants”).

23 ² SRA I LLC (“SRA I”), SRA II LLC (“SRA II”), SRA III LLC (“SRA III”) (together, “SRA Funds”) and Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”) (collectively the “Relief Defendant Entities”).

24
 25 ³ By stipulation, Sherwood Partners also became the Receiver for third-party affiliated entities NYPA Fund I LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) (together, “NYPA Funds”) and NYPA Management Associates LLC (collectively, “NYPA Entities”) and Felix Multi-Opportunity Funds I and II, LLC (“FMOF I and II”) (together, “FMOF Funds”) and FMOF Management Associates, LLC (collectively, “FMOF Entities”).
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1 in order to stop Bivona, Frank Mazzola and the companies they currently control or previously
2 controlled from continuing to defraud investors, from which Bivona, Frank Mazzola and their
3 companies raised over \$53 million in the SRA Funds. Bivona, Frank Mazzola, Saddle River
4 Advisors (“Saddle River”) and SRA Management Associates, LLC (“SRA Management”), marketed
5 investments in early-to-late stage, pre-IPO technology companies, however Bivona, Saddle River and
6 SRA Management lied to investors and used their money to purchase shares promised to earlier
7 investors in other unrelated funds. Bivona, Saddle River and SRA Management also used the SRA
8 Funds’ bank accounts to pay for personal expenses for John Bivona and his family. (DE 1, Complaint
9 at ¶¶ 2, 3)

11 Among other things, the Commission alleged that Bivona, Saddle River and SRA Management
12 disguised their misconduct by continually transferring money in and out of multiple bank accounts
13 associated with more than a dozen different funds and entities. Millions of dollars have been
14 funneled to pay for the expenses of earlier funds that Bivona and Saddle River also manage, while at
15 least \$5.7 million has been diverted to family members to pay, among other things, credit card bills,
16 income taxes, a car loan, unrelated defense attorney fees, and the mortgage on a Jersey Shore
17 vacation home. Bivona, Saddle River and SRA Management failed to provide investors with the
18 promised financial statements that should have revealed their fraud. Bivona steered the lion’s share
19 of the misappropriated money to benefit Bivona’s nephew, Frank Mazzola, who faced SEC fraud
20 charges for an earlier investment scheme, which resulted in the March 2014 entry of permanent
21 injunctions by this Court and the institution of an administrative SEC order barring Mazzola from the
22 securities industry for at least three years. (DE 1, Complaint at ¶¶ 4, 5)

25 On March 25, 2016, on the basis of the allegations in the Complaint, the SEC’s Motion for a
26 Temporary Restraining Order (DE 4) and the documentation filed by the SEC in support of the SEC’s
27 Motion (DE 5-20), the Court entered an Order Granting Temporary Restraining Order, Appointment
28

1 of Independent Monitor, and other Preliminary Relief (DE 36). On October 11, 2016, on consent,
2 Judge Chen appointed the Independent Monitor, Sherwood Partners, Inc., as the Receiver for
3 defendant SRA Management and relief defendants SRA Funds and Clear Sailing. By stipulation,
4 Sherwood Partners, Inc. also became the Receiver for third-party affiliated entities NYPA Fund I
5 LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) and NYPA Management Associates LLC
6 (collectively, “NYPA Entities”) and Felix Multi-Opportunity Funds I and II, LLC (“FMOF I and II”)
7 and FMOF Management Associates, LLC (collectively, “FMOF Entities”). Like the SRA Funds,
8 those third-party affiliates held their pre-IPO shares and interests through Clear Sailing. (DE 142)
9

10 The Receivership Defendants⁴ do not currently have any permanent employees, and have ceased
11 operations. The shares of private companies beneficially owned by the SRA Funds and other
12 investment funds, such as the NYPA Funds and Felix Multi-Opportunity Funds, are held centrally at
13 Clear Sailing, through ownership interests in the Clear Sailing entities. Because these private
14 company shares are not held within the SRA Funds, or other investment funds, claiming an
15 ownership interest over the shares, it is appropriate to have these entities in the Receivership Estate to
16 be administered pursuant to this Distribution Plan. (DE 142)
17

18 Through mandatory settlement conferences, the SEC Staff reached tentative settlements in
19 principle with defendants John Bivona and Frank Mazzola and relief defendants Anne Bivona and
20 Michele Mazzola. These settlements are subject to completion of the necessary documentation and
21 the Commission’s approval.
22
23

24 **1. Current Financial Status of Receivership Estate**

25 Initially, the Independent Monitor filed reports on April 11, 2016 (DE 54), April 25, 2016 (DE
26 60), May 10, 2016 (DE 74), and July 5, 2016 (DE 120), when the case converted to a Receivership,
27

28 ⁴ SRA Management, SRA Funds and Clear Sailing.

1 the Receiver filed the first quarterly report on February 1, 2017 (DE 168), and May 16, 2017 (DE
2 183).

3 The Receiver has taken steps necessary to preserve the status quo as to the Corporate Defendants
4 and Relief Defendant Entities and to allow the investigation of the nature, location and rightful
5 allocation of their assets. To date, the Receiver, on behalf of the Corporate Defendants and Relief
6 Defendant Entities, and related entities in the Receivership Estate has marshalled and now holds the
7 following assets (the "Current Assets") in the Receivership Estate:

8 a. \$1,665,219.77 in proceeds from the sale of shares of Square, Inc. after the start of the
9 receivership.

10 b. securities (or forward contracts on securities) including, but not limited to, Addepar, Airbnb,
11 Badgeville, Bloom Energy, Candi Controls, Cloudera, Dropbox, Evernote, Glam, Jawbone, Lookout,
12 Lyft, Mongo DB, Palantir, Pinterest, Practice Fusion, Snapchat, Uber, Twitter, Box, oDesk, Check,
13 Flurry, and Virtual Instruments. The Receiver will provide a report to the Court with the number of
14 shares held by the Receivership Estate.
15

16 c. any and all intangibles, including but not limited to, funds received or reasonably expected to
17 be received from potential claims from Avoidance Actions and other Causes of Action in favor of
18 the Receivership Estate.
19

20 **2. Substantive Consolidation due to Commingling**

21 Based on the Commission's accounting investigation and the Receiver's investigation into the
22 shortfall of the investments, and his marshalling of assets of the Corporate Defendants and Relief
23 Defendant Entities, it has been determined that:
24

25 a. Bivona and the Corporate Defendants commingled and transferred funds among the Relief
26 Defendant Entities and Receivership Entities;
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28

1 b. Bivona and the Corporate Defendants expended amounts in excess of the management fees
2 permitted under the management agreements;

3 The Receiver is terminating all management agreements with SRA Management, NYPA
4 Management and FMOF Management and the advisory agreements with defendant Saddle River so
5 that no further management or advisory fees will be paid or owed to SRA Management, NYPA
6 Management, FMOF Management and/or Saddle River.

7 The Receiver anticipates that the Commission will impose a monetary judgment on the Corporate
8 Defendants consisting of disgorgement. The Receiver also anticipates consenting to a judgment for
9 full injunctive relief, and disgorgement sought by the Commission in its Complaint, subject to the
10 approval of the Commission and this Court. The proposed settlement by the Receiver would provide
11 that the monetary judgment against SRA Management will be deemed satisfied by the payments
12 contemplated to investors and creditors under this Distribution Plan.

13 Due to the extensive commingling of funds among the Corporate Defendants and Relief
14 Defendant Entities and misappropriation of investor money by Bivona and the Corporate Defendants,
15 the Commission and the Receiver propose to consolidate the assets and liabilities of the Corporate
16 Defendants, Relief Defendants Entities and affiliated third party entities, including the dissolution of
17 all of the Corporate Defendant, Relief Defendant Entities and affiliated third party entities, and to
18 distribute the assets pursuant to the following plan of distribution to investors and creditors on a pro
19 rata basis. In addition, to unwind the transactions supporting the Unsecured Claims and Unsecured
20 Creditor Claims would be unduly burdensome, prohibitively expensive and administratively
21 unfeasible.

22 **C. Definitions**

23 “Administrative Claims” means accrued and unpaid Receiver’s fees and expenses and Receiver
24 counsel, accountant and other professional fees and expenses, through distribution including court
25

1 ordered fees and expenses owed to the Receiver when acting in the prior capacity of Independent
2 Monitor through date of distribution. Employee salaries for those retained by the Receiver, and Trust
3 Fund Taxes incurred during receivership, i.e. payroll taxes and income taxes for the period covered
4 by the Receivership and possibly the monitorship.

5 “Administrative Reserve” means the amount of funds, the Receiver upon consultation with the
6 SEC Staff shall calculate an administrative reserve sufficient to complete distributions and wind
7 down the Receivership Estate.

8
9 “Avoidance Action” means any cause of action to avoid or recover a transfer of property of the
10 Receivership Estate or interest of the Receivership Entities in property, including actions arising
11 under applicable federal, state or common law.

12 “Bivona Bankruptcy Case” the Chapter 7 Bankruptcy Proceeding of John Vincent Bivona, Case
13 No. 16-12961-SCC, in the United States Bankruptcy Court for the Southern District of New York.

14 “Cause of Action” means a claim, right, action, chose in action, suit, cause of action, judgment,
15 belonging to the Receivership Estate and any and all liabilities, obligations, and debts owing to the
16 Receivership Estate, whether arising prior to or after October 11, 2016.

17
18 “Claim Objection” means an objection filed with the Court and served on the Commission and
19 the Receiver prior to a claim objection cutoff date by any person who disputes the determinations of
20 the Receiver in accordance with the Plan.

21 “Corporate Defendants” means Saddle River and SRA Management.

22
23 “Disallowed Claims” include claims belonging to or asserted by or on behalf of (i) John V.
24 Bivona; (ii) Frank Mazzola; (iii) Anne Bivona; (iv) Michele Mazzola; (v) David Jurist; (vi) Alice
25 Jurist; (vii) former agents or employees of Saddle River Advisors, Felix Investments, FMOF
26 Management, NYPA Management, SRA Management, Clear Sailing IV and Clear Sailing V and the
27 Fortuna Fund Management; (viii) other insiders (including Emilio DiSanluciano); (ix) Management
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1 fees; (x) Inter-company claims; and (xi) and any claim for the guarantee of a debt or financial
2 obligation for the benefit of insiders, including but not limited to John V. Bivona, Frank Mazzola,
3 Anne Bivona, Michele Mazzola, David Jurist, and Alice Jurist, by FMOF Management, or NYPA
4 Management or any other of the Receivership Entities.

5 “Distributable Funds” means assets determined by the Receiver, as approved by the Court,
6 available for distribution in accordance with the Plan. This includes the proceeds of any sales of
7 securities after the date of the appointment of the Receiver, on October 11, 2016, including the
8 proceeds from the sale of securities of Square, Inc.
9

10 “Distribution” means the disbursement of money from the Distribution Account or a Corporate
11 Defendant account to Eligible Claimants pursuant to the Plan.

12 “Distribution Account” means a checking account or accounts established by the Receiver to
13 receive the monies from the Corporate Defendants, Relief Defendant Entities and affiliated third
14 party entities that are scheduled to be disbursed in accordance with the Plan. “Distribution Account”
15 shall also mean a checking account established by the Receiver to accept disgorgement or Fair Fund
16 monies from the Commission, subject to any limitations on disbursement required by the
17 Commission. Multiple such accounts may be necessary to ensure that the entire amount deposited is
18 insured by the Federal Deposit Insurance Corporation.
19

20 “Distribution Plan” or “Plan” means this proposed joint plan of distribution for the resolution and
21 distribution of funds on claims to investors and creditors harmed as a result of the violations alleged
22 in the Commission’s complaint.
23

24 “Eligible Claimant” means any investor or creditor with Valid Claims.

25 “Other Recoveries” means any investor or creditor recovery for capital, profit, claims or damages,
26 other than through the Plan, including but not limited to any funds received or reasonably expected to
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1 be received in the Bivona Bankruptcy Case, other litigation or from third party sources, included but
2 not limited to payment on personal guarantees.

3 “Receivership Claims” means any legal claims the Corporate Defendants or Relief Defendant
4 Entities or affiliated third party entities have against third parties.

5 “Receivership Defendants” means SRA Management, SRA Funds and Clear Sailing.

6 “Receivership Entities” means SRA Management, SRA Funds, Clear Sailing, the NYPA Entities,
7 and FMOF Entities.

8 “Receivership Estate” means the assets and property, in whatever form, of the Receivership
9 Entities.
10

11 “Relief Defendant Entities” means SRA Funds and Clear Sailing.

12 “Unsecured Claims” means investor claims. Investor claims are the principal amount invested in
13 or through Clear Sailing or related entities in securities for which there has been no distribution
14 including: (i) Clear Sailing holdings began in mid-2011, (ii) investor claims in Fortuna Fund LLC I
15 and Fortuna Fund LLC II (collectively, the “Fortuna Fund”) to the extent the Fortuna Fund invested
16 in Clear Sailing, as identified by the SEC Staff, Receiver or Distribution Agent, if any, (iii) all
17 investor claims for principal are calculated by reducing claims by any redemptions paid excluding
18 redemptions or distributions on account of the purchase of any pre-IPO shares; (iv) All investor
19 claims for principal are calculated by offsetting/reducing claims by amounts received or reasonably
20 expected to be received in the Bivona Bankruptcy Case, other litigation or from third party sources,
21 including but not limited to payment on personal guarantees.
22

23 “Unsecured Creditor Claims” means principal amount owed on loans and business debt, if any
24 including: (i) vendors; (ii) Progresso Ventures, (iii) Benchmark Capital, (iv) Global Generation; (v)
25 business debts; (v) Other claims of taxing authorities, such as non-trust fund taxes, state income
26 taxes, franchise type taxes. All creditor claims for principal amounts are calculated by reducing
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1 claims by amounts received or reasonably expected to be received in the Bivona Bankruptcy Case or
2 other litigation or from third party sources, including but not limited to payment on personal
3 guarantees. Contractual rate of interest will be used for trade and financial institutional lenders,
4 default rate of interest will be excluded. Otherwise, the treasury rate for unpaid federal funds or such
5 other appropriate rate as determined by the Receiver and the Court will be used.

6 “Valid Claim” means an investor or creditor claim that the Receiver and the SEC Staff have
7 determined is represented by a valid invoice, receivable, or debt against the Corporate Defendants,
8 Relief Defendant Entities and/or Receivership Entities supported by the submissions of the investor
9 or creditor claimant, the books and records of the Corporate Defendants and Relief Defendant
10 Entities, or other sources of information reasonably available to the Receiver. Investor or creditor
11 claimant submissions will include a sworn declaration, affidavit or attestation, and all claims will be
12 subject to the jurisdiction of the District Court for the Northern District of California.
13

14 **D. Distribution Plan Notice**

15 Upon entry of an appropriate scheduling order to approve a claims process,
16

- 17 a. The Receiver and/or SEC Staff will file by ECF and serve pursuant to ECF those parties
18 that have an account on the District Court’s website and mail to known Unsecured Claims
19 and Unsecured Creditor Claimants that do not have an account on the District Court’s
20 website a copy of the approved Plan, together with the information the Receiver will have
21 determined is necessary to inform the Unsecured Claims and Unsecured Creditor
22 Claimants of their potential right to receive funds from the Distributable Funds pursuant to
23 the approved Plan.
24
- 25 b. The Receiver shall post a Distribution Plan notice on the Receiver’s website at:
26 <http://www.shrwood.com/saddleriver> to alert Unsecured Claims and Unsecured Creditor
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1 Claimants of their potential rights to receive funds from the Distributable Funds. The

2 Receiver's website shall include a link to a copy of the Distribution Plan.

3 c. The SEC Staff will also post a link to the Distribution Plan on www.sec.gov

4 **E. Marshalling and Liquidation of the Assets and Liabilities of the Corporate and Relief**
5 **Defendants**

6 In anticipation of implementing the Distribution Plan upon approval of the Court, the Receiver in
7 consultation with SEC Staff shall:

- 8
- 9 a. Determine the amounts of any Valid Claims, as set forth below;
- 10 b. Consolidate the existing Corporate and Relief Defendant accounts into the Distribution
11 Account;
- 12 c. In accordance with a proposed further Order of the Court, liquidate the non-cash assets
13 in the Receivership Estate and deposit cash receipts for the non-cash assets in the
14 Distribution Account;
- 15
- 16 d. To the extent the non-cash assets in the Receivership Estate are securities, the Receiver
17 shall liquidate or resell the securities in a manner consistent with state and federal
18 corporate and securities laws. The Receiver anticipates that such resale shall be done in
19 accordance with Section 5 of the Securities Act of 1933 ("Securities Act") or in
20 accordance with exemptions from registration provided in the Rules promulgated by the
21 Commission pursuant to the Securities Act; and is authorized to seek the retention of
22 such professionals necessary to assist the Receiver with such transactions;
- 23
- 24 e. In accordance with a proposed further Order of the Court, expeditiously prosecute and
25 resolve such Receivership Claims, as in his discretion, taking into account the merits of
26 the potential claims, likelihood of success, the cost of pursuing claims (including the
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1 costs of the on-going administration of the Receivership), and the likely recovery, the
2 Receiver concludes should be pursued in the interests of the investors and creditors;

- 3 f. To the extent that any purported outstanding agreements have not already been
4 cancelled, such agreements will be reviewed by the Receiver for possible termination,
5 cancellation or amendment.

6 **F. Determination of Eligible Claims**

7 The Receiver and the SEC Staff will determine which Unsecured Claims and Unsecured
8 Creditor Claims are Valid Claims based upon the Corporate Defendants' and Relief Defendants
9 existing records, submissions of the Claimants to the Receiver, and other sources of information
10 reasonably available to the Receiver or the SEC Staff.

11 To the extent that presently available records do not allow the Receiver to determine whether
12 a Claim is a Valid Claim, the Receiver, in coordination with the SEC Staff, shall undertake
13 reasonable efforts to supplement the records. Such efforts may include requesting records or
14 affirmations from Claimants. Claimants shall provide documentation requested by the Receiver
15 necessary to allow the Receiver to determine the validity of the Claim.
16

17 **G. Distributions**

18 The distribution methodology in this Plan seeks to achieve the prompt, fair, and efficient
19 distribution of the Distributable Funds to those victims who suffered a loss as a result of the
20 violations alleged in the Complaint, as well as the creditors of the Corporate Defendants, Relief
21 Defendants and affiliated third party entities. The amount of the Distributable Funds is unknown
22 and may be less than the total Valid Claims.
23

24 1. **First Distribution**

25 First, pay accrued Administrative Claims in full and satisfy or partially satisfy Administrative
26 Reserve; Second, pay pro rata all Unsecured Claims for principal amount outstanding and all
27
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1 Unsecured Creditor Claims for loans or business debt up to principal amount owed plus contractual
2 rate of interest for business debt or loans, accrued as of October 11, 2016.

3 (For purposes of distributions on Unsecured Creditor Claims and Unsecured Claims, these claims
4 shall be paid on a par or pari passu).

5 2. Second Distribution

6 First, pay in full accrued but unpaid Administrative Claims;

7
8 Second, satisfy unpaid amounts from the First Distribution; Third, pay pro rata interest at the treasury
9 rate for unpaid federal funds or such other appropriate rate as determined by the Receiver and the
10 Court, accrued as of October 11, 2016, to investors that purported to purchase securities or a series of
11 securities from the FMOF Funds, NYPA Funds, SRA Funds and/or Clear Sailing, and those
12 securities have been sold by the Receiver or have been determined to be of limited value by the
13 retained financial professionals. These are investors who are not eligible for the Third Distribution
14 described below and their claims are deemed satisfied to the extent they are paid in full on their
15 principal and interest claim in this distribution.
16

17 Pay pro rata interest, as defined above, on all other Unsecured Creditor Claims which are not
18 entitled to a contract rate of interest. (Note that all claims for interest shall be paid on a par or pari
19 passu)

20 3. Third Distribution

21 A Third Distribution will only be made if securities remain to be sold after the Second
22 Distribution. This can occur if the issuer goes public, or either another liquidity event occurs, or the
23 Receiver and his financial professionals in their business judgment determine to liquidate the
24 remaining positions. In the event securities are sold and there is enough to fund a third distribution,
25 claims will be paid as follows: First, pay all accrued but unpaid Administrative Claims; Second,
26 satisfy unpaid amounts from the Second Distribution; Third, pay remaining investors as follows:
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1 Investors will submit documentation to the Receiver to support their purported investment in
2 securities or a series of securities that have been or may be sold for a profit by the Receiver. The
3 Receiver will determine who is eligible to participate in the Third Distribution based on the
4 documentation provided. Those eligible will be paid a distribution pro rata based on the amount of
5 securities they purported to have purchased less the principal repayment they received in the First and
6 Second Distributions.

7
8 Prior to making the Third Distribution, the Receiver will file a motion with the Court seeking
9 approval of the Third Distribution which will include a list of those eligible to receive a distribution
10 based on the documentation reviewed by the Receiver.

11 4. Subsequent Distributions

12 From time to time, and in the event additional monies are received by the Receivership, the
13 Receiver shall first pay accrued and unpaid Administrative Claims and taxes if any and then to satisfy
14 unpaid amounts from previous distributions.

15
16 **H. Reports to the Court and to Claimants**

17 The Receiver shall file a written report with the Court no less than every 120 days regarding
18 the status of efforts to implement this Distribution Plan. The Receiver shall post a copy of its written
19 report, which may be part of the quarterly report, on its website in order to provide notice to
20 claimants.

21 **I. Adjustments and Amendments**

22 To carry out the purposes of the Distribution Plan, the Receiver may make adjustments to the
23 Distribution Plan, consistent with the purposes and intent of the Distribution Plan, as may be agreed
24 upon between the Receiver and the Commission and approved by the Court.

25
26 The Commission reserves the right to propose amendments to the Distribution Plan at the request
27 of the Receiver, or on its own initiative. The Court retains jurisdiction over this matter for the
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1 purpose of ruling on any such proposed amendments and for any and all other matters that may arise
2 under or relate to the Distribution Plan.

3 **J. Possible Avoidance Actions and Retained Claims**

4 All Causes of Action, including possible Avoidance Actions, are to be preserved by and for the
5 Receivership Estate and the Receiver for the Receivership Estate expressly preserves such Causes of
6 Action for later adjudication and nothing herein waives the right to bring such Causes of Action
7 unless the Cause of Action has been settled in this Distribution Plan.
8

9 **K. Completion of Plan**

10 The Receiver will complete the distributions required by the Plan within two years from date the
11 Plan is approved by the Court, unless, an application is filed with and approved by the Court to
12 extend the time to complete the distributions.

13 If the Receiver or the SEC Staff shall determine that the Receiver has concluded his duties and
14 obligations under the Receivership appointment orders issued by the Court, as may have been
15 amended, either the Receiver or the SEC Staff may apply to the Court for an Order terminating the
16 Receivership.
17

18 Any Order terminating the Receivership shall provide for the Receiver to file a final accounting
19 providing schedules identifying: (i) all assets, their source and value; and (ii) all liabilities, the nature
20 and amount of such claims.

21 The Receiver shall preserve all records and documents obtained during the Receivership until a
22 date that is 1 year following the close of the Receivership.
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