

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

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.

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

Proposed Joint Plan of Distribution



1 **A. Summary of Distribution Plan**

2 The Securities and Exchange Commission (“Commission” or “SEC”) and Sherwood Partners,
 3 Inc., the court-appointed receiver (“Receiver”), respectfully submit this proposed Joint Plan of
 4 Distribution (the “Plan” or “Distribution Plan”) to distribute funds to investors and creditors harmed
 5 as a result of the violations alleged in the Commission’s complaint (DE 1). Pursuant to the October
 6 11, 2016 Order (DE 142, Stipulated Order Appointing Receiver), the Court appointed the Receiver to
 7 take possession and control of the assets of certain Defendants¹ and Relief Defendants² and third
 8 party affiliated entities³ (the “Receivership Estate”) and to develop a plan for the administration of
 9 the Receivership Estate.
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11 This Plan provides for the determination of investor and creditor claims to assets in the
 12 Receivership Estate (including assets that may be collected hereafter) and for the *pro rata* distribution
 13 of assets as set forth herein. This Plan also provides for the orderly sale of the shares and financial
 14 interests held by the entities in the Receivership Estate and the pro rata distribution of the proceeds to
 15 investors and creditors based upon their net out-of-pocket investments and to creditors based on the
 16 debt owed. If there are sufficient proceeds, investors will receive interest on the principal amount of
 17 their investments to compensate investors for the time value of their money— and creditors will
 18 receive either the contractual rate of interest or the treasury rate for unpaid federal funds or such other
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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”)
 24 and Clear Sailing Group IV LLC and Clear Sailing Group V LLC (together, “Clear Sailing”)
 (collectively the “Relief Defendant Entities”).

25 ³ By stipulation, Sherwood Partners also became the Receiver for third-party affiliated entities NYPA
 26 Fund I LLC (“NYPA I”), NYPA II Fund LLC (“NYPA II”) (together, “NYPA Funds”) and NYPA
 27 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 appropriate rate as determined by the Receiver and the Court. Investors who purchased securities
2 that are determined to have no value, either before or after the appointment of the Receiver on
3 October 11, 2016, may share in the proceeds of other assets, but at a discount. These investors will
4 receive their pro rata distribution which will be limited to 25 to 30 percent of the principal amount of
5 their claim. In the event that the sale of shares or economic interests in a particular company,
6 generates an excess recovery and the other investors have received the principal amount of their
7 investments plus interest, then the Receiver will be authorized to propose a supplemental distribution
8 to those investors who subscribed and/or invested in the shares of the particular company or contracts
9 for shares of the particular company generating the excess recovery.

11 In addition, if the Court determines that the shares and financial interests held by the entities in
12 the Receivership Estate are to be held for a period of time which could exceed 2 years, there will be a
13 mechanism for investor and creditor claimants to elect an early payment of 25-30% on valid claims,
14 if feasible. Such election will be by a date certain to be set by the Court.

15 The Plan will also provide for the retention by the Receivership, pursuant to Court order, of an
16 Investment Banker to liquidate certain securities held by the Receivership to allow for an early
17 payment, if elected and if feasible, and to monitor the securities held by the Receivership, file
18 quarterly periodic reports regarding those securities, file recommendations for process and timing of
19 sales and management of the securities.

21 **B. Background**

22 The Commission filed its complaint against John V. Bivona ("Bivona"), Frank Mazzola, the
23 Corporate Defendants, and Relief Defendants in this action on March 22, 2016. It brought this action
24 in order to stop Bivona, Frank Mazzola and the companies they currently control or previously
25 controlled from continuing to defraud investors, from which Bivona, Frank Mazzola and their
26 companies raised over \$53 million in the SRA Funds. Bivona, Frank Mazzola, Saddle River
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1 Advisors (“Saddle River”) and SRA Management Associates, LLC (“SRA Management”), marketed
2 investments in early-to-late stage, pre-IPO technology companies, however Bivona, Saddle River and
3 SRA Management lied to investors and used their money to purchase shares promised to earlier
4 investors in other unrelated funds. Bivona, Saddle River and SRA Management also used the SRA
5 Funds’ bank accounts to pay for personal expenses for John Bivona and his family. (DE 1, Complaint
6 at ¶¶ 2, 3)

7
8 Among other things, the Commission alleged that Bivona, Saddle River and SRA Management
9 disguised their misconduct by continually transferring money in and out of multiple bank accounts
10 associated with more than a dozen different funds and entities. Millions of dollars have been
11 funneled to pay for the expenses of earlier funds that Bivona and Saddle River also manage, while at
12 least \$5.7 million has been diverted to family members to pay, among other things, credit card bills,
13 income taxes, a car loan, unrelated defense attorney fees, and the mortgage on a Jersey Shore
14 vacation home. Bivona, Saddle River and SRA Management failed to provide investors with the
15 promised financial statements that should have revealed their fraud. Bivona steered the lion’s share
16 of the misappropriated money to benefit Bivona’s nephew, Frank Mazzola, who faced SEC fraud
17 charges for an earlier investment scheme, which resulted in the March 2014 entry of permanent
18 injunctions by this Court and the institution of an administrative SEC order barring Mazzola from the
19 securities industry for at least three years. (DE 1, Complaint at ¶¶ 4, 5)

20
21 On March 25, 2016, on the basis of the allegations in the Complaint, the SEC’s Motion for a
22 Temporary Restraining Order (DE 4) and the documentation filed by the SEC in support of the SEC’s
23 Motion (DE 5-20), the Court entered an Order Granting Temporary Restraining Order, Appointment
24 of Independent Monitor, and other Preliminary Relief (DE 36). On October 11, 2016, on consent,
25 Judge Chen appointed the Independent Monitor, Sherwood Partners, Inc., as the Receiver for
26 defendant SRA Management and relief defendants SRA Funds and Clear Sailing. By stipulation,
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1 Sherwood Partners, Inc. also became the Receiver for third-party affiliated entities NYPA Fund I
 2 LLC ("NYPA I"), NYPA II Fund LLC ("NYPA II") and NYPA Management Associates LLC
 3 (collectively, "NYPA Entities") and Felix Multi-Opportunity Funds I and II, LLC ("FMOF I and II")
 4 and FMOF Management Associates, LLC (collectively, "FMOF Entities"). Like the SRA Funds,
 5 those third-party affiliates held their pre-IPO shares and interests through Clear Sailing. (DE 142)

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

13 ~~Through mandatory settlement conferences~~ On December 22, 2017, the SEC Staff reached
 14 tentative settlements in principle with ~~Court entered Final Judgments on consent against~~ defendants
 15 John Bivona and Frank Mazzola and relief defendants Anne Bivona and Michele Mazzola. These
 16 settlements are subject to completion of the necessary documentation and the Commission's
 17 approval.
 18 approval.

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

22 Initially, the Independent Monitor filed reports on April 11, 2016 (DE 54), April 25, 2016 (DE
 23 60), May 10, 2016 (DE 74), and July 5, 2016 (DE 120), when the case converted to a Receivership,
 24 the Receiver filed the first quarterly report on February 1, 2017 (DE 168), and May 16, 2017 (DE
 25 183).
 26

27
 28 ⁴ SRA Management, SRA Funds and Clear Sailing.

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

6 a. \$1,665,219.77 in proceeds from the sale of shares of Square, Inc. after the start of the
7 receivership. (some of which has been used to pay Court approved fees and expenses).

8 b. b\$500,000 payment from Anne Bivona pursuant to Final Judgment.

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

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

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

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

23 a. Bivona and the Corporate Defendants commingled and transferred funds among the Relief
24 Defendant Entities and Receivership Entities;

25 b. Bivona and the Corporate Defendants expended amounts in excess of the management fees
26 permitted under the management agreements;
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1 The Receiver is terminating all management agreements with SRA Management, NYPA
2 Management and FMOF Management and the advisory agreements with defendant Saddle River so
3 that no further management or advisory fees will be paid or owed to SRA Management, NYPA
4 Management, FMOF Management and/or Saddle River.

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

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

22 **C. Definitions**

23 "Administrative Claims" means accrued and unpaid Receiver's fees and expenses and
24 Receiver those of Receiver's counsel, ~~accountant~~ accountants and other ~~professional~~ professionals' fees
25 and expenses, through distribution ~~including court ordered fees and expenses owed to the Receiver~~
26 when acting in the prior capacity of Independent Monitor through date of distribution. Employee
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1 salaries for those retained by the Receiver, and Trust Fund Taxes incurred during receivership, i.e.
2 payroll taxes and income taxes for the period covered by the Receivership ~~and possibly the~~
3 ~~monitorship.~~

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

7
8 “Avoidance Action” means any cause of action, or defense against an action, to avoid or recover
9 a transfer of property of the Receivership Estate or interest of the Receivership Entities in property,
10 including actions, or defenses arising under applicable federal, state or common law.

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

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

16
17 “Claim Objection” means an objection ~~filed with the Court and served on the Commission and~~
18 the Receiver prior to a claim objection cutoff date by any person who disputes the determinations of
19 the Receiver of their claim, in accordance with the Plan. The SEC and or the Receiver will then
20 schedule a hearing for the Claim Objection to be heard by the Court.

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 “Disgorgement Funds” or “Fair Fund” means monies collected by the Commission that are
6 ordered paid to the Commission or the Receivership pursuant to a Final Judgement entered in this
7 case.

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

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

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

23 “Distribution Agent” means JND Corporate Restructuring (“JND”) of Denver Colorado.

24
25 “Distribution Plan” or “Plan” means this proposed joint plan of distribution for the resolution and
26 distribution of funds on claims to investors and creditors harmed as a result of the violations alleged
27 in the Commission’s complaint.
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1 "Distribution Plan Notice" means the notice to investors and creditors that the Plan is approved
2 and they are eligible for a distribution pursuant to this Distribution Plan or some part of their claim
3 may have been disallowed and they are entitled to file a Claim Objection. The Distribution Plan
4 Notice will include an Early Election Claim form. The Distribution Plan Notice will be subject to
5 Court approval.

6 "Eligible Claimant" means any investor or creditor with Valid Claims.

7 "Early Election Claim" means the claim of a creditor or investor that seeks an early percent
8 distribution of 25 - 30 % on their Valid Claim by submitting an Early Election Claim form by a date
9 to be set by the Court. (These creditors and investors shall be referred to as "Early Election
10 Claimants")

11 "Investment Banker" means such investment banker hired by the Receiver pursuant to Court
12 order.

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

17 "Receivership Claims" means any legal claims the Corporate Defendants or Relief Defendant
18 Entities or affiliated third party entities have against third parties.

19 "Receivership Defendants" means SRA Management, SRA Funds and Clear Sailing.

20 "Receivership Entities" means SRA Management, SRA Funds, Clear Sailing, the NYPA Entities,
21 and FMOF Entities.

22 "Receivership Estate" means the assets and property, in whatever form, of the Receivership
23 Entities.

1 “Record Date” means the date set by the Distribution Agent in consultation with the Receiver and
2 the SEC Staff, prior to any distributions of funds under the Plan.

3 “Rescission Claim” means an Unsecured Claim that is based on an investment in securities that
4 have been determined to have no value by the Record Date. The Rescission Claim will be 25 - 30%
5 of the principal amount of the Unsecured Claim.

6 “Rescission Claimant” means an investor with only Rescission Claims as of the Record Date. A
7 Rescission Claimant may include as part of his or her claim, those investments that had no value
8 before the receivership began on October 11, 2016.

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

10 “Subordinated Claim” means a claim for guarantees, broker fees, management fees, advisory
11 fees, or for transactions that lacked adequate consideration or value, or any claim listed on Exhibit A.
12 Exhibit A may be supplemented and amended.

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

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)
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1 business debts; (v) Other claims of taxing authorities, such as non-trust fund taxes, state income
2 taxes, franchise type taxes. All creditor claims for principal amounts are calculated by reducing
3 claims by amounts received or reasonably expected to be received in the Bivona Bankruptcy Case or
4 other litigation or from third party sources, including but not limited to payment on personal
5 guarantees. Contractual rate of interest will be used for trade and financial institutional lenders,
6 default rate of interest will be excluded. Otherwise, the treasury rate for unpaid federal funds or such
7 other appropriate rate as determined by the Receiver and the Court will be used.

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

16
17 **D. Distribution Proposed Plan Notice**

18 Upon entry of an appropriate scheduling order to approve ~~at~~ the Plan and implement the claims
19 process,

- 20 a. The Receiver and/or SEC Staff will file by ECF and serve pursuant to ECF those parties
21 that have an account on the District Court’s website and mail to known Unsecured Claims
22 and Unsecured Creditor Claimants that do not have an account on the District Court’s
23 website a copy of the ~~approved~~ Plan, together with the information the Receiver will have
24 determined is necessary to inform the Unsecured Claims and Unsecured Creditor
25 Claimants of their potential right to receive funds from the Distributable Funds pursuant to
26 the approved Plan.
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- 1 b. The Receiver shall post a ~~Distribution~~Proposed Plan ~~notice~~Notice on the Receiver's
2 website at: <http://www.shrwood.com/saddleriver> to alert Unsecured Claims and
3 Unsecured Creditor Claimants of their potential rights to receive funds from the
4 Distributable Funds; and to file an Objection to the Plan. The Receiver's website shall
5 include a link to a copy of the Distribution Plan.
- 6 c. The SEC Staff will also post a link to the Distribution Plan on www.sec.gov
- 7
- 8 d. The Receiver and the SEC Staff working with the Distribution Agent will serve a notice of
9 hearing to approve the Distribution Plan. An objection date will be set in the Proposed
10 Plan Notice, the Notice will be approved by the Court.
- 11 e. Upon approval of the Plan, The Receiver and/or SEC Staff working with the Distribution
12 Agent will serve a notice of possible distribution and optional request for an Early
13 Election Claim on Valid Claim holders. The Early Election Claim form will be due by a
14 date set in the scheduling order.

15

16 **E. Marshalling and Liquidation of the Assets and Liabilities of the Corporate and Relief**
17 **Defendants**

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

- 20 a. Determine the amounts of any Valid Claims, as set forth below;
- 21 b. Consolidate the existing Corporate and Relief Defendant accounts into the Distribution
22 Account;
- 23
- 24 c. In accordance with a proposed further Order of the Court, liquidate or manage the non-
25 cash assets in the Receivership Estate and upon liquidation deposit cash receipts for the
26 non-cash assets in the Distribution Account;
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1 e.d. Hire an Investment Banker pursuant to Court order to assist with the liquidation and
2 management of non-cash assets; to monitor securities held by the Receivership, file
3 periodic reports regarding those securities, file recommendations for process and timing
4 of sales and management of the securities;

5 d.e. To the extent the non-cash assets in the Receivership Estate are securities, the Receiver
6 shall liquidate or resell the securities in a manner consistent with state and federal
7 corporate and securities laws. The Receiver anticipates that such resale shall be done in
8 accordance with Section 5 of the Securities Act of 1933 ("Securities Act") or in
9 accordance with exemptions from registration provided in the Rules promulgated by the
10 Commission pursuant to the Securities Act; and is authorized to seek the retention of
11 such professionals necessary to assist the Receiver with such transactions;

12
13 e.f. In accordance with a proposed further Order of the Court, expeditiously prosecute and
14 resolve such Receivership Claims, as in his discretion, taking into account the merits of
15 the potential claims, likelihood of success, the cost of pursuing claims (including the
16 costs of the on-going administration of the Receivership), and the likely recovery, the
17 Receiver concludes should be pursued in the interests of the investors and creditors;

18
19 f.g. To the extent that any purported outstanding agreements have not already been
20 cancelled, such agreements will be reviewed by the Receiver for possible termination,
21 cancellation or amendment.

22
23 **F. Determination of Eligible Claims**

24 The Receiver and the SEC Staff will determine which Unsecured Claims and Unsecured
25 Creditor Claims are Valid Claims based upon the Corporate Defendants' and Relief Defendants
26 existing records, submissions of the Claimants to the Receiver, and other sources of information
27 reasonably available to the Receiver or the SEC Staff.
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1 To the extent that presently available records do not allow the Receiver to determine whether
2 a Claim is a Valid Claim, the Receiver, in coordination with the SEC Staff, shall undertake
3 reasonable efforts to supplement the records. Such efforts may include requesting records or
4 affirmations from Claimants. Claimants shall provide documentation requested by the Receiver
5 necessary to allow the Receiver to determine the validity of the Claim.

6 As of the Record Date, the Distribution Agent will send all Valid Claimants their claim
7 amount upon which they are to receive a distribution in the Distribution Plan Notice. Within 20
8 days of receipt of the Distribution Plan Notice any investor or creditor may dispute the amount or
9 priority listed in the Distribution Plan Notice by serving a Claim Objection on the SEC and the
10 Receiver. The SEC and or the Receiver will schedule a hearing at which point the Claim
11 Objection shall be heard by the Court.

12 **G. Distributions**

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

18 1. First Distribution

19 Upon the liquidation of assets by the Investment Banker or otherwise, to make the pro rata
20 distribution to the Early Election Claimants, these investors and creditors will be paid a pro rata 25-
21 30% of their Valid Claims, if feasible. There will be sufficient funds heldback in order to pay
22 necessary administrative expenses related to the sale of any assets and distribution of funds in this
23 first distribution. If claimants receive a distribution pursuant to their Early Election Claim, they are
24 not eligible for the Second Distribution described below.

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1 2. Second Distribution

2 Upon the sale of the remaining assets, including securities and financial interests held by the
 3 entities in the Receivership Estate, payments will be made as follows: First, pay accrued
 4 Administrative Claims in full and satisfy or partially satisfy Administrative Reserve; Second, pay pro
 5 rata all Unsecured Claims for principal amount outstanding ~~and, Rescission Claimants~~, all Unsecured
 6 Creditor Claims for loans or business debt up to principal amount owed plus contractual rate of
 7 interest for business debt or loans, accrued as of October 11, 2016.—
 8 (For purposes of distributions on Unsecured Creditor Claims and Unsecured Claims, these claims
 9 shall be paid on a par or pari passu)—

10 ~~2. Second Distribution~~

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

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

23 3. Third Distribution

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1 A Third Distribution will only be made if securities remain to be sold or proceeds remain to be
2 distributed after the Second Distribution. This can occur if thean issuer goes public, or either another
3 liquidity event occurs, or the Receiver and his financial professionals in their business judgment
4 determine to liquidate the remaining positions. In the event securities are sold and there is enough to
5 fund a third distribution, claims will be paid as follows: First, pay all accrued but unpaid
6 Administrative Claims; Second, satisfy unpaid amounts from the Second Distribution; Third, pay
7 remaining investors as follows:
8

9 Investors will submit documentation to the Receiver to support their purported investment in
10 securities or a series of securities that have been or may be sold for a profit by the Receiver. The
11 Receiver will determine who is eligible to participate in the Third Distribution based on the
12 documentation provided. Those eligible will be paid a distribution pro rata based on the amount of
13 securities they purported to have purchased less the principal repayment they received in the First
14 and/or Second Distributions.
15

16 Prior to making the Third Distribution, the Receiver will file a motion with the Court seeking
17 approval of the Third Distribution which will include a list of those eligible to receive a distribution
18 based on the documentation reviewed by the Receiver. These claimants may include those investors
19 and creditors that received an early payment and have an Early Election Claim deficiency amount.
20 The Receiver or the SEC Staff will also make a recommendation with respect to payment of some or
21 all of the Subordinated Claims.
22

23 4. Subsequent Distributions

24 From time to time, and in the event additional monies are received by the Receivership, the
25 Receiver shall first pay accrued and unpaid Administrative Claims and taxes if any and then to satisfy
26 unpaid amounts from previous distributions.
27

28 H. Reports to the Court and to Claimants

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

5 **I. Adjustments and Amendments**

6 To carry out the purposes of the Distribution Plan, the Receiver may make adjustments to the
7 Distribution Plan, consistent with the purposes and intent of the Distribution Plan, as may be agreed
8 upon between the Receiver and the Commission and approved by the Court.
9

10 The Commission reserves the right to propose amendments to the Distribution Plan at the request
11 of the Receiver, or on its own initiative. The Court retains jurisdiction over this matter for the
12 purpose of ruling on any such proposed amendments and for any and all other matters that may arise
13 under or relate to the Distribution Plan.
14

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

16 All Causes of Action, including possible Avoidance Actions, are to be preserved by and for the
17 Receivership Estate and the Receiver for the Receivership Estate expressly preserves such Causes of
18 Action for later adjudication and nothing herein waives the right to bring such Causes of Action
19 unless the Cause of Action has been settled in this Distribution Plan.
20

21 **K. Completion of Plan**

22 The Receiver will complete the distributions required by the Plan within ~~two~~five years from date
23 the Plan is approved by the Court, unless, an application is filed with and approved by the Court to
24 extend the time to complete the distributions.
25

26 If the Receiver or the SEC Staff shall determine that the Receiver has concluded his duties and
27 obligations under the Receivership appointment orders issued by the Court, as may have been
28

1 amended, either the Receiver or the SEC Staff may apply to the Court for an Order terminating the
2 Receivership.

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

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