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7 UNITED STATES DISTRICT COURT
 8 DISTRICT OF ARIZONA

9 _____
 10 SECURITIES AND EXCHANGE
 COMMISSION,

11 Plaintiff,

12 - against -

13 HOWARD R. BAER and
 14 KEVIN C. BAER,

15 Defendants.
 16 _____

Case No. CV06-2792-PHX-FJM

PROPOSED AMENDED
 DISTRIBUTION PLAN

17 The plaintiff Securities and Exchange Commission (the “Commission”)
 18 respectfully submits this Proposed Amended Distribution Plan for the distribution of
 19 funds subject to the Court’s jurisdiction in this case.

20 **I. Background**

21 The Commission filed a Complaint against the Defendants Howard R. Baer and
 22 Kevin C. Baer on November 20, 2006. The Complaint charged that the Defendants

1 Howard R. Baer and Kevin C. Baer violated the anti-fraud provisions of the federal
2 securities laws with respect to the sale and offer for sale of Health Enhancement
3 Products, Inc. (“HEPI”) common stock.

4 The Complaint specifically alleged that the Defendant Howard R. Baer violated
5 Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a), and
6 Sections 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §
7 78j(b), and Rules 10b-5 and 13a-14 thereunder, 17 C.F.R. §§ 240.10b-5 and 240.13a-14.

8 The Complaint further alleged that the Defendant Howard R. Baer engaged in acts that
9 aided and abetted the violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a),
10 and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20,
11 240.13a-1, 240.13a-11, and 240.13a-13. The Complaint also alleged that the Defendant
12 Kevin Baer engaged in acts that aided and abetted the violation of Section 10(b) of the
13 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

14 The Defendants Howard R. Baer and Kevin C. Baer each consented to the entry of
15 final judgments against them.

16 On November 29, 2006, the Court entered a Final Judgment as to the Defendant
17 Howard R. Baer. This Final Judgment permanently enjoined the Defendant Howard R.
18 Baer from future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),
19 Sections 10(b) and 13(a) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11,
20 13a-13, and 13a-14 thereunder, 17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1,
21 240.13a-11, 240.13a-13, and 240.13a-14. In addition, the Defendant Howard R. Baer
22 was prohibited from serving as an officer or director of any issuer that has a class of

1 securities registered with the Commission pursuant to Section 12 of the Exchange Act, 15
2 U.S.C. § 78l, or that is required to file reports with the Commission pursuant to Section
3 15(d) of the Exchange Act. 15 U.S.C. § 78o(d). The Final Judgment required the
4 Defendant Howard R. Baer to disgorge his ill-gotten gains of \$1,349,592.81 and
5 prejudgment interest of \$88,734.60, for a total of \$1,438,327.41, which amounts were to
6 be paid to the Clerk of the Court. Finally, the Final Judgment against the Defendant
7 Howard R. Baer required him to pay a civil penalty of \$120,000 to the Commission and
8 remitted to the United States Treasury.

9 On November 29, 2006, the Court also entered a Final Judgment as to the
10 Defendant Kevin C. Baer. This Final Judgment permanently enjoined the Defendant
11 Kevin C. Baer from future violations of Section 10(b) of the Exchange Act, 15 U.S.C.
12 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. This Final Judgment barred
13 Defendant Kevin C. Baer from serving as an officer or director of any issuer that has a
14 class of securities registered with the Commission pursuant to Section 12 of the
15 Exchange Act, 15 U.S.C. § 78l, or that is required to file reports with the Commission
16 pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d), for a period of five
17 years. Finally the Final Judgment against the Defendant Kevin C. Baer required him to
18 pay a civil penalty of \$25,000 to the Commission, and remitted to the United States
19 Treasury.

20 The Final Judgment as to the Defendant Howard R. Baer provided that the
21 amounts of disgorgement and prejudgment interest paid to the Clerk together with
22 interest thereon would constitute a Fund, and that “The Commission may propose a plan

1 to distribute the Fund pursuant to the Court’s approval.” The Fund is on deposit in the
2 Court Registry Information System (“CRIS”) under the case name designation “*SEC v.*
3 *Howard R. Baer, et al.*, D09AZ – 2:06-CV-2792-01 (the “HEPI Fund”). The HEPI Fund
4 constitutes a Qualified Settlement Fund under Section 468B-a of the Internal Revenue
5 Code, 26 U.S.C. § 468B-1, and related regulations, 26 C.F.R. §§ 1.468B-1 through
6 1.468B-5. The HEPI Fund is composed of the amounts currently in the CRIS account
7 and any interest on such amounts. Any further payments made by the Defendant Howard
8 R. Baer with respect to disgorgement or prejudgment interest will be made to the
9 Commission and remitted to the United States Treasury.

10 As more fully set forth below, the distribution of the HEPI Fund will be by the
11 Distribution Agent acting under the direction and supervision of the Commission. The
12 distribution of the HEPI Fund will be by class:

- 13 • First, pro rata to investors, other than Institutional Investors (registered
14 broker-dealers), who purchased HEPI common stock during the Covered
15 Period and who sustained a Eligible Loss;
- 16 • Second, if any amounts remain in the HEPI Fund after such payments, then
17 to Institutional Investors who purchased HEPI common stock during the
18 Covered Period and who sustained a Eligible Loss; and
- 19 • Third, if any amounts remain in the HEPI fund after such payments, then to
20 the Commission which will remit such funds to the United States Treasury.

1 The fees and expenses of the Distribution Agent and the Tax Administrator, and any
2 taxes due on the HEPI Fund will be paid or reserved from the HEPI Fund before any
3 distribution is made.

4 **II. Distribution Plan Methodology and Summary**

5 The Distribution Plan seeks to achieve the prompt, fair, and efficient allocation of
6 the HEPI Fund to those investors who sustained a loss because of the activities of the
7 Defendants as alleged in the Complaint.

8 The premise of the Distribution Plan is that the Defendants' activities constituted a
9 "fraud on the market." A fraud on the market occurs when a defendant makes a material
10 misrepresentation to the investing public and the affected security trades on an efficient
11 market. Where there is a fraud on the market, the presumption is that each investor has
12 relied upon the material misrepresentation. For the Distribution Plan, the Covered Period
13 during which the fraud on the market occurred is from October 31, 2003 through May 31,
14 2004.

15 Injured investors are purchasers of HEPI common stock during the Covered
16 Period and who sold the stock at a loss (a Recognized Loss) or retained the stock after
17 May 31, 2004 (an Unrecognized Loss).

18 An investor who claims to have sustained a Recognized Loss, an Unrecognized
19 Loss, or both, will be required to submit a Proof of Claim Form to the Distribution Agent.
20 The Distribution Agent will review the submitted Proof of Claim Form, and give the
21 investor a reasonable opportunity to cure any deficiencies and/or to submit additional
22 materials in support of their claim, before the Distribution Agent makes a determination

1 as to the validity of the claim. Any investor whose claim is denied will have the
2 opportunity to obtain a review by the Commission.

3 The Distribution Fund will be paid first to pro rata to investors, other than
4 Institutional Investors (registered broker-dealers), who purchased HEPI common stock
5 during the Covered Period and who sustained a Recognized Loss or an Unrecognized
6 Loss. If any amounts remain, it will next be paid to Institutional Investors who purchased
7 HEPI common stock during the Covered Period and who sustained a Recognized Loss.
8 Finally, any remaining amounts in the HEPI Fund after the distributions to Eligible
9 Claimants will be paid to the Commission, and then remitted to the United States
10 Treasury.

11 As the Commission will be supervising the distribution process, upon the approval
12 of this Amended Distribution Plan the Clerk of the Court shall transfer to the
13 Commission all funds on deposit in the CRIS account, after the Clerk deducts the
14 appropriate fees. The Commission shall thereupon deposit such transferred amount with
15 the Bureau of the Public Debt, United States Department of the Treasury. Such funds
16 shall be held by the Bureau of the Public Debt until further direction from the
17 Commission pursuant to the terms of this Amended Distribution Plan.

18 **III. Definitions**

19 As used in this Distribution Plan, certain words and phrases (which are capitalized
20 when used herein) have the following meanings:

21 1. **“Approved Claim”** means the final amount of an Eligible Claimant’s
22 asserted claim that is approved pursuant to this Distribution Plan.

1 2. **“Available Distribution”** means the amounts in the HEPI Fund, less any
2 amounts expended or reserved for the administration of the HEPI Fund with respect to
3 the reasonable fees and expenses of the Distribution Agent and the Tax Administrator,
4 and any taxes due with respect to the HEPI Fund, and any other costs and expenses
5 incurred by the HEPI Fund or in the distribution of the HEPI Fund.

6 3. **“Bureau of the Public Debt”** means the Bureau of the Public Debt in the
7 United States Department of the Treasury.

8 4. **“Claims Bar Date”** means the date established by the Distribution Plan by
9 which a Potentially Eligible Claimant must file a Proof of Claim Form to participate in
10 the distribution of the HEPI Fund. The Claims Bar Date shall be set by the Commission
11 in the Order implementing the Distribution Plan, and shall be not less than 90 days after
12 the date of such Commission Order.

13 5. **“Claim”** means the assertion by a Potentially Eligible Claimant of an
14 Eligible Loss.

15 6. **“Claims Deficiency Notice”** means the notice sent by the Distribution
16 Agent to any Potentially Eligible Claimant when the Distribution Agent determines that
17 the Proof of Claim Form submitted by the Potentially Eligible Claimant is deficient in
18 one or more ways, such as, for example, the failure to provide required information or
19 documentation. The Distribution Agent shall provide the Claims Deficiency Notice to
20 the Potentially Eligible Claimant within 60 days after the Claims Bar Date. The Claims
21 Deficiency Notice shall advise the Potentially Eligible Claimant of the reason or reasons

1 for the deficiency, and shall provide the Potentially Eligible Claimant with a period of 60
2 days from the date of the Claims Deficiency Notice to cure such deficiency.

3 7. **“Claims Package”** means the following materials to be provided to a
4 Potentially Eligible Claimant:

- 5 a. The Distribution Plan Notice;
- 6 b. The Distribution Plan;
- 7 c. A Proof of Claim Form; and
- 8 d. Instructions for completing the Proof of Claim Form.

9 8. **“Commission”** means the United States Securities and Exchange
10 Commission, and, when appropriate, such officer or employee of the Commission
11 authorized by the Commission to act for it under delegated authority.

12 9. **“Court”** means the United States District Court for the District of Arizona
13 at Phoenix.

14 10. **“Covered Period”** means October 31, 2003 through May 31, 2004.

15 11. **“Distribution Agent”** means Rust Consulting, Inc., appointed as
16 Distribution Agent by the Court.

17 12. **“Distribution Payment”** means the payment made by the Distribution
18 Agent to an Eligible Investor representing the Eligible Investor’s pro rata share of the
19 HEPI Fund based on the amount of the Approved Claim.

20 13. **“Distribution Plan Notice”** means the notice given to Potentially Eligible
21 Claimants of their right to participate in the distribution of the HEPI Fund. The
22 Distribution Plan Notice shall, in plain English, inform Potentially Eligible Claimants of

1 their right to file a Proof of Claim Form if they believe that they may have sustained a
2 Eligible Loss (which includes both a Recognized Loss and an Unrecognized Loss). The
3 Distribution Plan Notice shall include:

- 4 a. A brief description of the fraudulent conduct involved in this action;
- 5 b. A summary of the claims process; and
- 6 c. Contact information of the Distribution Agent for a Potentially
7 Eligible Claimant to obtain additional information.

8 14. **“Eligible Claimant”** means any Potentially Eligible Claimant whose claim
9 is allowed by the Distribution Agent or by the Court following review of a denial of
10 claim by the Distribution Agent. The following may not be Eligible Claimants:

- 11 a. Any HEPI Investor who has fully recovered, from any source, the
12 principal amounts expended in the purchase of HEPI common stock
13 during the Covered Period.
- 14 b. Any HEPI Investor who is a present or former officer, director, or
15 employee of HEPI, and any heir, assignee, distributee, legatee,
16 donee, spouse, parent, child, relative, or controlled entity of any
17 officer, director, or employee of HEPI.
- 18 c. Any HEPI Investor who, on or before the Claims Bar Date, was the
19 subject of any criminal action or proceeding related to the violations
20 alleged in the Commission’s complaint in this action, other than a
21 Person found not guilty of all of such criminal charges or as to
22 whom all of such criminal charges were dismissed with prejudice on

1 or before the Claims Bar Date, and any heir, assignee, distributee,
2 legatee, donee, spouse, parent, child, relative, or controlled entity of
3 any such Person.

4 15. **“Eligible Loss”** means the sum of the amount of Recognized Loss and the
5 amount of Unrecognized Loss incurred by any HEPI Investor. The following principles
6 govern the computation of Eligible Loss, Recognized Loss, and Unrecognized Loss:

- 7 a. Only HEPI common stock purchased during the Covered Period is
8 considered in calculating Eligible Loss, Recognized Loss, and
9 Unrecognized Loss. Any HEPI common stock owned before the
10 commencement of the Covered Period, or purchased after the end of
11 the Covered Period, is excluded for this purpose.
- 12 b. All sales of HEPI common stock during and after the Covered
13 Period will be applied first to purchases of HEPI common stock
14 during the Covered Period on a “first in, first out” basis.
- 15 c. Eligible Loss shall not include any consequential or incidental
16 damages.
- 17 d. Tax consequences of any transaction in HEPI common stock shall
18 not be considered in the computation of Eligible Loss, Recognized
19 Loss, and Unrecognized Loss.

20 16. **“Final Determination”** means the determination by the Distribution Agent
21 to allow or to disallow, in whole or in part, a Claim. The Distribution Agent shall

1 provide written notice of the Final Determination of a Claim to the Potentially Eligible
2 Claimant within 150 days of the Claims Bar Date.

3 17. **“HEPI Fund”** means the distribution fund created in this action.

4 18. **“HEPI Investor”** means any Person who purchased HEPI common stock
5 during the Covered Period. HEPI Investor includes both Institutional Investors and Non-
6 Institutional Investors. HEPI Investor includes both Persons who purchased HEPI
7 common stock in a public trade (i.e., through a broker on the OTC Bulletin Board) and in
8 a private offering.

9 19. **“Institutional Investor”** means a Person who now is or during the
10 Covered Period was a registered securities broker, dealer, or broker-dealer.

11 20. **“Non-Institutional Investor”** means a Person who is not an Institutional
12 Investor.

13 21. **“Person”** means any natural individual and any legal entity, including
14 corporations, partnerships, limited liability companies, organizations, associations, and
15 governmental units.

16 22. **“Potentially Eligible Claimant”** means any HEPI Investor.

17 23. **“Proof of Claim Form”** means the form send by the Distribution Agent to
18 Potentially Eligible Claimants. The Proof of Claim Form shall require such information
19 as the Distribution Agent believes appropriate to determine the validity and amount of
20 any claim submitted. The Distribution Agent may use a different Proof of Claim Form
21 for Institutional Investors and for Non-Institutional Investors.

1 24. **“Published Notice”** shall mean a short notice prepared by the Distribution
2 Agent providing notice of the Distribution Plan. The Published Notice shall, in plain
3 English, inform any Persons who may have purchased HEPI common stock during the
4 Covered Period that they may be eligible for a distribution from the HEPI Fund, and that
5 they may obtain a Claims Package by contacting the Distribution Agent at the address,
6 phone number or email address provided. The Published Notice shall:

- 7 a. Be posted on the website maintained by the Commission,
8 www.sec.gov, under “Investors Claims Funds;”
- 9 b. Be posted on a website to be set up by the Distribution Agent; and
- 10 c. Be published one time in The Wall Street Journal (national edition).

11 The Distribution Agent may provide such other or further postings or publications as it
12 deems appropriate. The Distribution Agent shall provide the Published Notice within 21
13 days of the entry of the Order of the Commission implementing the Distribution Plan.

14 25. **“Recognized Loss”** means the difference between the price paid for the
15 purchase of HEPI common stock during the covered period and the amount received for
16 the sale of such HEPI common stock during the covered period. If there are more than
17 one purchase and sale transactions, then the Recognized Loss shall be based on the sum
18 of all such transactions.

19 26. **“Review Process”** means the process by which a Potentially Eligible
20 Claimant may request that the Court review the denial by the Distribution Agent, in
21 whole or in part, the Claim of such Potentially Eligible Claimant. Such review shall be

1 conducted by the Commission or such officer or employee of the Commission as the
2 Commission may designate for such purpose.

3 27. **“Unrecognized Loss”** means the difference between the price paid for the
4 purchase of HEPI common stock during the covered period, which HEPI common stock
5 was not sold during the covered period, and the value of the HEPI common stock as of
6 the close of business on the last day of the Covered Period or the amount received as a
7 result of the sale of such HEPI common stock after the last day of the Covered Period,
8 whichever is greater.

9 28. **“Statement of Tax Consequences”** means a statement sent to Eligible
10 Claimants concerning the possible tax consequences of a distribution. The Distribution
11 Agent, in consultation with the Tax Administrator, shall send the Statement of Tax
12 Consequences to the Eligible Claimants at the time that a Distribution Payment is made
13 to such Eligible Claimants.

14 29. **“Tax Administrator”** means Damasco & Associates, LLP, the firm
15 appointed as Tax Administrator in this action.

16 **IV. Responsibilities of Distribution Agent**

17 The Distribution Agent shall:

- 18 a. Prepare, distribute, and publish the Distribution Plan Notice and the
19 Published Notice.
- 20 b. Identify and locate HEPI Investors.
- 21 c. Prepare and distribute Claims Packages to Potentially Eligible Claimants.
- 22 d. Review all Proof of Claim Forms filed.

- 1 e. Provide Claim Deficiency Notices as appropriate.
- 2 f. Make a Final Determination on whether to allow or disallow, in whole or in
- 3 part, all Claims.
- 4 g. Report to the Commission all Claims allowed and disallowed.
- 5 h. Propose the amounts to be distributed to Eligible Claimants.
- 6 i. Upon approval by the Commission, distribute the appropriate amounts to
- 7 Eligible Claimants, and provide Eligible Claimants with a Statement of Tax
- 8 Consequences.
- 9 j. If any distributions to Eligible Claimants are returned or not cashed,
- 10 prepare a report to the Commission making a recommendation on the
- 11 disposition of such amounts.
- 12 k. File reports with the Commission at least once every 90 days. The first
- 13 report shall be due within 60 days of the Order implementing the Amended
- 14 Distribution Plan. All reports shall be on the Standardized Fund
- 15 Accounting Report (“SFAR”) as adopted by the Commission. A copy of
- 16 the SFAR is attached to this Distribution Plan as Exhibit A.
- 17 l. File requests to the Commission for approval of payment of Distribution
- 18 Agent’s fees and expenses. The fees and expenses of the Distribution
- 19 Agent shall be governed by the terms set forth in the Schedule of
- 20 Distribution Agent Fees and Expenses attached to this Distribution Plan as
- 21 Exhibit B (specific fee information on this Schedule will be redacted on
- 22 publically available documents).

1 **V. Responsibility of the Tax Administrator**

2 The Tax Administrator shall:

- 3 a. Administer the tax obligations of the HEPI Fund as provided in the Order
4 appointing the Tax Administrator.
- 5 b. Consult with the Distribution Agent in the preparation of the Statement of Tax
6 Consequences.

7 **VI. Identification of and Notice to Potentially Eligible Claimants**

8 The Commission staff will provide the Distribution Agent with the following:

- 9 a. A copy of the “Bluesheet” for HEPI common stock. The “Bluesheet
10 shall include, but need not be limited to, the Covered Period.
- 11 b. An unredacted copy of the list of possible HEPI Investors prepared
12 by the Commission staff which is to be used to provide notice to
13 Potentially Eligible Claimants of the Commission’s Motion for
14 Approval of Distribution Plan.
- 15 c. Such other information as the Commission staff believes might be
16 appropriate for use by the Distribution Agent to locate possible
17 HEPI Investors.

18 The Distribution Agent shall send by first class mail a Claims Package to each
19 Person who, based on the above information, the Distribution Agent determines to be a
20 Potentially Eligible Claimant. If any Claims Package is returned as undelivered, the
21 Distribution Agent shall attempt to obtain a more current address for such Potentially
22 Eligible Claimant, and if successful shall resend the Claims Package by first class mail.

1 In its discretion, the Distribution Agent may use other methods to contact any Potentially
2 Eligible Claimant, or the agent, attorney, or legal representative of any Potentially
3 Eligible Claimant.

4 The Distribution Agent shall also send by first class mail a Claims Package to any
5 person who requests one by representing that they may be a Potentially Eligible
6 Claimant.

7 **VII. Determination of Validity and Amount of Claims**

8 The Distribution Agent shall review each Proof of Claim Form to determine the
9 following:

- 10 a. Did the Potentially Eligible Claimant purchase HEPI common stock
11 during the Covered Period?
- 12 b. What amount did the Potentially Eligible Claimant pay to purchase
13 HEPI common stock during the Covered Period (treating each
14 purchase separately)?
- 15 c. Did the Potentially Eligible Claimant sell HEPI common stock
16 purchased during the Covered Period before the end of the Covered
17 Period?
- 18 d. What amount did the Potentially Eligible Claimant received for the
19 sale of HEPI common stock during or after the Covered Period
20 (treating each sale separately)?
- 21 e. What amount of Recognized Loss, if any, did the Potentially Eligible
22 Claimant incur (applying the “first in, first out” rule)?

- 1 f. What amount of Unrecognized Loss, if any, did the Potentially
2 Eligible Claimant incur (applying the “first in, first out” rule)?
- 3 g. Combining the Recognized Loss and the Unrecognized Loss, what is
4 the Eligible Loss?
- 5 h. Did the Potentially Eligible Claimant recover any amounts from the
6 sale of HEPI common stock after the last day of the Covered Period?
- 7 i. Is the Potentially Eligible Claimant disqualified from being an
8 Eligible Claimant?
- 9 j. Is the Potentially Eligible Claimant an Institutional Investor or a
10 Non-Institutional Investor?

11 In determining Eligible Loss, the Distribution Agent shall aggregate all accounts
12 of a Potentially Eligible Claimant who holds more than one account in the same
13 capacity.

14 The Distribution Agent shall complete the review of all Proof of Claim Forms
15 within 90 days of the Claims Bar Date. A Final Determination of the Distribution Agent
16 allowing a claim in full shall state in writing the amount of Eligible Loss and that the
17 Eligible Loss is held by an Institutional Investor or a Non-Institutional Investor. A final
18 Determination of a Distribution Agent denying a claim in whole or in part shall state in
19 writing the answers to items a to j above, in addition to any explanation of the
20 determination of the validity of the claim.

1 **VIII. Procedure for Review of Disallowed Claims**

2 Within 30 days from the denial of a claim, an HEPI Investor may seek review of
3 such denial by the Commission staff. Review is obtained by the HEPI Investor sending a
4 letter to the Distribution Agent stating the reasons that such review is sought and that the
5 claim should have been allowed and providing any additional supporting documents to
6 the Distribution Agent. The Distribution Agent will provide such letter, and any
7 documents relating to the denial of the claim, to the Commission staff for its review. The
8 Commission staff shall review the denial of the claim promptly based on the submission,
9 and the determination by the Commission staff shall be final.

10 **IX. Distribution Among Eligible Claimants**

11 Within 90 days of the Claims Bar Date or within 30 days of the resolution by the
12 Commission staff of any requests for review of the denial of claims, whichever is later,
13 the Distribution Agent shall file a written report with the Commission setting forth (i) a
14 list of all claims allowed and disallowed; (ii) the proposed amounts to be reserved from
15 the HEPI Fund for the payment of fees, costs; (iii) and expenses, including taxes, and the
16 proposed amount to be distributed to each Eligible Claimant . Any documents relating to
17 such proposed distribution made available to the public shall be redacted to remove the
18 HEPI Investor's name, address, telephone number, and other personal identification.

19 No distribution shall be made to an Eligible Claimant whose distribution amount is
20 less than \$10. All other distributions shall be rounded down to the next lower \$10 (*i.e.*, a
21 calculated distribution of \$26.90 would be rounded down to \$20.00).

1 The HEPI Fund shall be distributed pro rata first to the Eligible Claimants who are
2 Non-Institutional Investors. The amount remaining in the HEPI Fund after the
3 distribution to Eligible Claimants who are Non-Institutional Investors shall be distributed
4 pro rata to the Eligible Claimants who are Institutional Investors.

5 Upon the approval of the amounts of the distribution by the Commission, the
6 Distribution Agent and the Commission shall notify the Bureau of the Public Debt of the
7 amounts to be distributed to the Eligible Claimants. The Distribution Agent shall
8 promptly distribute these amounts. Any checks issued by the Distribution Agent to an
9 Eligible Claimant shall become void 90 days after issuance. The Distribution Agent shall
10 make reasonable efforts to contact any Eligible Claimant whose check is returned or
11 whose check remains unnegotiated after 45 days.

12 Each distribution payment shall be made to an Eligible Claimant with the
13 following information:

- 14 (a) A statement that the payment is a distribution of the HEPI Fund established by the
15 Court on the motion of the Commission.
- 16 (b) A statement on the distribution check and on the notice accompanying the
17 distribution check stating that the check will become void 90 days after issuance.
- 18 (c) The name, telephone number, and e-mail address of a person to contact for
19 questions concerning the distribution.

20 Checks that are not negotiated within the 90 day period shall be voided, and in
21 such event, the issuing financial institution is to be instructed to stop payment on such
22 checks. If an Eligible Claimant's check has not been negotiated before the stale date and

1 has been voided by the Distribution Agent, the Eligible Claimant's claim shall be
2 extinguished on the occurrence of the stale date.

3 Within six months after the approval of the amounts of the distribution by the
4 Commission, the Distribution Agent shall file a written report with the Commission
5 accounting for any checks which were returned or which remain unnegotiated. The
6 Distribution Agent shall at that time recommend to the Commission, based on the number
7 of checks returned or undeposited, the practicability of making a secondary distribution
8 to Eligible Claimants.

9 If the Commission does not authorize a secondary distribution, the Commission
10 shall direct that the balance of funds remaining in the HEPI Fund be remitted to the
11 United States Treasury.

12 **X. General Provisions**

13 The Commission or the Distribution Agent may make adjustments to or extend
14 any of the time deadlines set forth in this Distribution Plan that are consistent with the
15 purposes of this Distribution Plan. Any such adjustments, other than the extension of any
16 time deadline for a period of not more than 30 days must be approved by the Court.

17 All fees and expenses incurred in the performance of the Distribution Agent's
18 duties under the Distribution Plan, and all fees and expenses incurred in the performance
19 of the Tax Administrator's duties, and the payment of any applicable federal, state, or
20 local taxes payable with respect to the Distribution Plan shall be paid from the HEPI
21 Fund upon further order of the Commission.

1 Under no circumstances shall the Distribution Agent incur any liability to any
2 Person by making a distribution in accordance with a claim approved by the Commission.
3 Upon receipt and acceptance by an Eligible Claimant of a distribution from the HEPI
4 Fund, such Eligible Claimant shall be deemed to have fully released all claims that such
5 Eligible Claimant may have against the Distribution Agent and the Commission, and
6 shall be deemed to be enjoined from prosecuting or asserting such claims. The
7 submission of a Proof of Claim Form, the submission of a Pre-Qualified Claimant's
8 Certification, or the acceptance of a distribution from the HEPI Fund shall not affect the
9 rights or claims of an Eligible Claimant as against any Person other than the Distribution
10 Agent, the Commission, their officers, directors, commissioners, employees, agents, and
11 attorneys.

12 In the event of a conflict between this Distribution Plan and (i) the Court order
13 approving this Distribution Plan or (ii) the Commission order implementing this
14 Distribution Plan, the Court order or the Commission Order, as appropriate, shall control.
15 In the event of a conflict between the Court Order and the Commission Order, the Court
16 Order shall control.

17 [THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

1 Upon conclusion of the distribution, the Distribution Agent shall turn over to the
2 Commission all physical and electronic documents in its possession relating to the
3 administration of the Distribution Plan. Except as required by the Federal Records Act,
4 the Commission may destroy these documents three years after the conclusion of the
5 distribution.

6 DATED this _____ day of _____, 2012:

7
8