

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-11676

In the Matter of

JOHN W. ADAMS and AIP, LLC,

Respondents.

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**PROPOSED PLAN OF
DISTRIBUTION**

OVERVIEW

The Division of Enforcement (“Division”) submits the following Distribution Plan to the Securities and Exchange Commission (“Commission”) pursuant to Rule 1101 of the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. §201.1101. This Distribution Plan proposes distributing \$2,470,471 paid by John W. Adams (“Adams”), the former Chief Executive Officer and Chairman of the Board of Hawaiian Airlines (“Hawaiian”), and AIP, LLC (“AIP”), Hawaiian’s former controlling shareholder (collectively known as the “Respondents”) as the result of an enforcement action brought by the Commission against Respondents involving a June 2002 issuer tender offer in which Hawaiian Airlines repurchased \$25 million of stock from its shareholders while failing to disclose that the company had suffered a significant economic downturn.

This Distribution Plan is subject to the notice and comment procedure set forth in paragraph 48. This Distribution Plan is subject to approval by the Commission, and the Commission retains jurisdiction over implementation of the Distribution Plan.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Settlement Description

1. On September 23, 2004, the Commission entered an Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”) against the Respondents. John W. Adams and AIP, LLC, Exchange Act Release No. 50427 (September 23, 2004). The Commission accepted the Respondents’ Offer of Settlement in which they consented to the issuance of the Order without admitting or denying the Commission’s findings. The Order is published at <http://www.sec.gov/litigation/admin/34-50427.htm>.

2. In the Order, the Commission found that the Respondents caused Hawaiian to violate the Securities Exchange Act of 1934 by failing to update material information published in Hawaiian’s tender offer documents in mid-2002 concerning Hawaiian’s ability to afford the tender offer and remain solvent. Minority shareholders who, unlike the Respondents, declined to tender their shares, found the value of their stock significantly diminished when the negative financial information concerning Hawaiian was made public.

3. The Commission ordered AIP to pay disgorgement of \$2,229,193, plus prejudgment interest of \$237,094, and required Adams to pay disgorgement of \$3,782, plus prejudgment interest

of \$402, representing the Respondents' alleged unjust enrichment from the above-described violations of the federal securities laws.

4. The Order required, among other things, that the above-referenced disgorgement amounts be paid into an interest bearing escrow account and that the escrowed funds be disbursed only pursuant to an order of the Commission. By October 12, 2004, Respondents paid the monies called for under the Order into an escrow account. On October 13, 2005, the funds were transferred to the U.S. Department of Treasury Bureau of Public Debt ("BPD") and have been invested in short-term U.S. Treasury bills. Other than interest from these investments, it is not anticipated that the Disgorgement Fund will receive additional funds.

B. Appointment of Fund Administrator

5. The Commission has appointed Gilardi & Co., LLC ("Gilardi") as the Fund Administrator of the Distribution Plan. See Order Approving Publication of Notice of Proposed Distribution Plan and Opportunity for Comment, Approving Plan Administrator, and Approving Administrator Bond, Exchange Act Release No. 59431 (February 20, 2009). Gilardi is a class action notice and claims administrator with principal business offices located in San Rafael, California. Gilardi shall be entitled to reasonable fees in accordance with the proposal submitted to the Commission and shall be entitled to reimbursement for reasonable costs and expenses from the Disgorgement Fund. The fees and expenses for the administration of the Disgorgement Fund will be paid first from interest earned on the invested funds, then, if not sufficient, from the corpus.

C. Bond

6. Gilardi shall post a bond in the amount of the \$2,500,000.00 within 30 days after approval of this Distribution Plan, pursuant to Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans, which covers the base amount paid by Respondents.

D. Appointment of Tax Administrator

7. The Commission has appointed Damasco & Associates as the Tax Administrator ("Tax Administrator") of the Distribution Fund. See Order Directing Appointment of Tax Administrator, Exchange Act Release No. 51341 (March 9, 2005). The Fund Administrator and Respondents will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, and any other tax-related work to the Tax Administrator by the Commission staff. The Tax Administrator shall be compensated from the interest earned on the Disgorgement Fund, and if the interest is not sufficient, then from the corpus.

E. Duties of Fund Administrator

8. Gilardi will be responsible for, among other things, overseeing the administration of the Disgorgement Fund, obtaining accurate mailing information for shareholders, preparing accountings, cooperating with the tax administrator in providing the information necessary to accomplish the income tax compliance, distributing money from the Disgorgement Fund to shareholders in accordance with this Plan, and setting up and staffing a call center to address Eligible Recipient's questions or concerns regarding the distribution.

9. Gilardi shall ensure that sufficient amounts are withheld from the Disgorgement Fund to satisfy any tax liability and to pay the Tax Administrator's fees and reimbursable costs.

10. Gilardi shall file with Commission staff a quarterly application for fees and reimbursement of costs and expenses. Commission staff will obtain an order approving such an application and arrange for payment.

11. In carrying out its duties, Gilardi may be assisted by the Commission staff or others acting under its supervision. In addition, Gilardi shall be entitled to rely on the information provided by Respondents and others concerning the identification of the Eligible Recipients as well as the number of Hawaiian shares purchased in the Tender Offer.

II. DEFINED TERMS

12. This Distribution Plan uses a number of terms that have specific meanings and references for purposes of this Plan:

a. “Approval Date” means the date on which this Distribution Plan is approved by the Commission;

b. “Claim Deadline” means the date by which all Claim Forms must be returned to the Fund Administrator in order to be eligible to receive any payment from the Fund. The Claims Deadline will be approximately 90 days after the Claim Forms are mailed;

c. “Claim Form” means the form which will be mailed from the Fund Administrator (or his agents) to certain potentially Eligible Recipients seeking relevant transaction data which must be verified and, if necessary, supported by evidence from the potentially Eligible Recipient to be eligible for payment from the Fund;

d. “Disgorgement Fund” or “Fund” shall mean the \$2,470,471 in disgorgement and prejudgment interest paid by Adams and AIP for ultimate distribution to Eligible

Recipients, plus any interest earned and less any taxes, fees, or expenses incurred for any reserves and the administration of the distribution plan;

e. “Distribution Date” means the date that distribution checks are mailed to Eligible Recipients, which will be approximately 150 days after the Claim Deadline;

f. “Eligible Recipient” shall mean the holders of Hawaiian’s outstanding common stock at the close of the market on June 27, 2002 who (a) did not tender their shares to Hawaiian in the Tender Offer; or (b) who tendered their shares but who timely withdrew that tender and whose shares were not purchased by Hawaiian in the Tender Offer. At the time of the Tender Offer, Hawaiian’s stock traded under the symbol “HA” on the American Stock Exchange and Pacific Stock Exchange (CUSIP number 001751-41987910);

g. “Fund Administrator” shall mean Gilardi, appointed by the Commission to administer the Distribution Plan in accordance with the Commission’s Rules on Fair Fund and Disgorgement Plans; and

h. “Tender Offer” shall mean the issuer tender offer (as that term is defined in Rule 13(a)(2) of the Securities Exchange Act of 1934) proposed by Hawaiian on May 31, 2002 with a closing date on June 27, 2002.

III. IMPLEMENTATION OF THE PLAN

A. Identification of Eligible Recipients

13. According to this Distribution Plan, Eligible Recipients are limited to those who did not tender their shares to Hawaiian in the Tender Offer; or who tendered their shares but who timely withdrew that tender and whose shares were not purchased by Hawaiian in the Tender Offer.

14. On the basis of its investigation, and using records and information provided by Respondents and/or third parties, the Division has collected information that identifies shareholders who did and did not tender shares in the Tender Offer. The Division will provide this information to the Fund Administrator.

15. The Fund Administrator shall take all reasonable steps to ascertain the identity and location of potentially Eligible Recipients. In particular, the Fund Administrator shall prepare a claim package consisting of a summary of the Distribution Plan and its purpose (“Summary”), instructions for filing a Claim Form (“Instructions”), and a Claim Form (“Claim Package”), which shall be submitted for Commission staff review and approval.

16. The Fund Administrator shall take reasonable steps to obtain from Hawaiian’s transfer agent and/or the Depository/Information Agent for the Tender Offer (Mellon Investor Services LLC) information sufficient to identify all of the shareholders who did and did not tender their Hawaiian shares in the Tender Offer.

17. The Fund Administrator shall also place notices concerning the Disgorgement Fund in the Honolulu Advertiser, Honolulu Star Bulletin and a wire service. Any person or entity responding to the notice before the Claim Deadline shall be sent a Claim Package.

B. Claims Process

18. Within 30 days after this Distribution Plan is approved (the “Approval Date”), the Fund Administrator shall begin to cause the Claim Package to be sent to all potentially Eligible Recipients by First Class Mail.

19. Where shares are held by brokers and nominees, the Fund Administrator shall take reasonable steps to solicit the names and addresses of the non-tendering shareholders from the brokers and nominees, and shall cause the Claim Package to be sent to the potentially Eligible Recipients by First Class Mail, requesting potentially Eligible Recipients to send in completed Claim Forms by the Claim Deadline.

20. The Fund Administrator shall attempt to locate any Eligible Recipient whose Claim Form has been returned by the U.S. Postal Service (“USPS”) as undeliverable. The Fund Administrator shall immediately remail any returned undelivered mail for which the USPS has provided a forwarding address. Additionally, the Fund Administrator may engage a third-party search firm to conduct more rigorous searches for missing Eligible Recipients. Additional efforts to identify new addresses for returned undelivered mail will be conducted as necessary and economically reasonable after consultation with the staff of the Commission.

21. All claims, which must be in writing, shall be accompanied by such documentary evidence as the Fund Administrator deems necessary or appropriate to substantiate the claim. Each Eligible Recipient must verify on his Claim Form that he did not tender shares under penalty of perjury. The Fund Administrator shall review all claim submissions, evaluate each submission for

completeness and determine the eligibility of each submitting Eligible Recipient to participate in the Disgorgement Fund.

22. The Fund Administrator shall notify, in writing, all parties whose claim the Fund Administrator rejected for participation in the Disgorgement Fund. The Fund Administrator shall advise each party in writing of the basis of the rejection of his claim. Any party who seeks reconsideration of the denial must so advise the Fund Administrator within 20 days of the postmark date of the initial denial of the claim. Following subsequent review, the Fund Administrator shall notify such party in writing of the Fund Administrator's final decision, which shall be non-appealable.

C. Allocation of the Disgorgement Fund

23. Each Eligible Recipient returning a Claim Form shall receive the total of the Eligible Recipient's pro rata distribution of the Disgorgement Fund (after payment of the Fund Administrator's reasonable fees and reimbursement of the Fund Administrator's reasonable costs and expenses) for each non-tendered share for which such Eligible Recipient has submitted an approved application. An Eligible Recipient shall not be eligible to receive a distribution if the pro rata distribution for that Eligible Recipient is worth less than ten dollars [\$10.00]. All payments that would amount to less than ten dollars will be added back to the Disgorgement Fund and made available for allocation, as appropriate, to other Eligible Recipients.

24. Each Eligible Recipient's pro rata distribution shall be calculated as follows: The Disgorgement Fund shall be divided by the total number of shares of Hawaiian outstanding common

stock for which valid Claim Forms has been submitted, then multiplied by the number of shares for which such Eligible Recipient has submitted a valid Claim Form.

25. A residual within the Disgorgement Fund is established for any amounts remaining after all assets have been disbursed. The residual may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, distributions from checks that were not delivered or accepted upon delivery, and tax refunds. In consultation with Commission staff, money that remains in the Disgorgement Fund one year after all approved Eligible Recipients who filed claims before the Claim Deadline are paid shall be distributed to otherwise Eligible Recipients who file claims after the Claim Deadline. Any such second distribution shall be paid at the same pro rata distribution factor of the recognized loss that was used in the original distribution and with the same \$10.00 minimum payout requirement. Second distribution claims shall be paid on a first filed, first distributed basis until funds are exhausted. Any funds remaining after a second distribution shall be paid to the Commission for transfer to the United States Treasury after the final accounting is approved by the Commission.

26. After the claims process is complete, the Fund Administrator will determine the Eligible Recipients and allocate the amounts of their payment, applying the principles set forth in Section III of this Plan.

27. The Fund Administrator shall notify each Eligible Recipient, in writing, regarding the disbursement to which it is entitled and the basis for such computation. If an Eligible Recipient disputes the amount, the Eligible Recipient must so advise the Fund Administrator in writing within 20 days of the postmark date of the notification and explain the basis for objection. Following

subsequent review, the Fund Administrator shall notify such Eligible Recipient in writing of the Fund Administrator's final decision regarding the distribution amount, which shall be non-appealable.

IV. ADMINISTRATION OF THE PLAN

A. Control of the Disgorgement Fund

28. The assets of the Fund are subject to the continuing jurisdiction and control of the Commission. The Disgorgement Fund is currently deposited at the BPD.

29. The Disgorgement Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5.

30. Upon approval of the Plan, the Fund Administrator shall establish an Escrow Account and an unfunded Controlled Distribution Account at Wells Fargo Bank, N.A. ("Wells Fargo"), in the name of and bearing the Employer Identification Number ("EIN") of the QSF as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: Name of QSF, [EIN], as custodian for the benefit of investors allocated a distribution from John Adams/AIP, LLC Plan of Distribution. The terms of the applicable escrow agreement shall be in a form provided by and approved by Commission staff.

31. Wells Fargo will hold the Disgorgement Fund assets during the check-cashing period. Wells Fargo maintains a Bankers Blanket Bond, which includes errors and omissions coverage with per occurrence limits of \$100,000,000.00 and a single aggregate limit in the amount of \$100,000,000.00. The primary insurer is Superior Guarantee Insurance Company of Vermont, a

captive subsidiary of Wells Fargo and Company, which as of its most recent long term issue rating, was rated AAA by Standard and Poor's. Wells Fargo annually assesses the adequacy of their policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. The limits of Wells Fargo are reviewed annually by the companies' Board of Directors. Documentation has been provided to the assigned Commission staff to support the foregoing representations.

32. The Fund Administrator shall be the signer on the Escrow Account and the Controlled Distribution Account, subject to the continuing jurisdiction and control of the Commission.

33. Upon transfer from Treasury, the Funds will be held in the Escrow Account, separate from Wells Fargo assets, until presentation of a check. Presented checks will be subject to "positive pay" controls before they are honored by Wells Fargo, at which time funds will be transferred from the Escrow Account to the Controlled Distribution Account to pay the approved checks.

34. The Fund Administrator shall authorize Wells Fargo to provide account information to the Tax Administrator, including providing duplicate statements for the QSF account. The Fund Administrator shall use the assets and earnings of the Disgorgement Fund to provide payments to Eligible Recipients and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs.

35. The Escrow Account shall be invested in AAA- rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided

however, that the Money Market Mutual Funds' investments in short term U.S. Treasury securities will not be made through repurchase agreement or other derivative products.

B. Procedures for Distributing Funds

36. In order to distribute funds, the Fund Administrator will submit a list of payees and payment amounts (the "Payment List") to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the Fund Administrator based upon the Payment List.

37. All checks shall be cut by Wells Fargo. All checks will bear a stale date of 120 days from the date of the check. Checks that are not negotiated within the stale date shall be voided and Wells Fargo shall be instructed to stop payment on those checks.

38. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other tax related matters; (c) a statement that checks will be void after 120 days; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from an SEC Disgorgement Fund.

39. The Fund Administrator is responsible for accounting for all payments and transactions related to the Disgorgement Fund, including any distribution checks that expire uncashed. The Fund Administrator is responsible for researching and reconciling all returned items due to non-delivery, insufficient address, and/or any other deficiencies and shall issue new checks where appropriate.

40. In the event that an Eligible Recipient receives, but is not able to endorse, a Disgorgement Fund check as written (e.g. if an individual has changed names, a couple has divorced, or an individual is now deceased), and the Eligible Recipient or their lawful representative requests the re-issuance of a distribution check in a different name, the Fund Administrator will request, and must receive, documentation to support the requested change. The Fund Administrator will review the documentation to determine the authenticity and propriety of the change request. If such change request is properly documented, the Fund Administrator will issue an appropriately redrawn check to the requesting party.

41. The Fund Administrator will provide customer support and communications programs which will become active by the time the first Claim Forms are mailed. These services will include a toll free number and a website for the public. The Commission staff retains the right to review and approve any material posted on the website. The toll free number shall be published in the letter of explanation that accompanies the Claim Form as described in paragraph 15.

C. Procedures for Handling Returned Checks

42. Checks returned as undeliverable by the USPS and for which a new address has been provided by the USPS will be repackaged and sent to the new address. For checks returned as

undeliverable by the USPS and for which no new address is provided, the Fund Administrator shall direct an address update search be undertaken by a firm that specializes in such service. Additional efforts to identify new addresses for returned checks will be conducted as necessary and economically reasonable after consultation with the staff of the Commission. Where new address information becomes available, the Fund Administrator shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than 120 days after the initial mailing of the original check), the check shall be voided and the Fund Administrator shall instruct Wells Fargo to stop payment on such check.

43. After 120 days from the Distribution Date, Wells Fargo shall notify the Fund Administrator of all uncashed checks and will credit the Disgorgement Fund for the amount of all uncashed checks.

D. Accounting

44. Once the Disgorgement Fund has been transferred from the BPD to Wells Fargo, the Fund Administrator will file an accounting with the Commission during the first ten days of each calendar quarter on a standardized accounting form provided by the staff of the Commission, and will submit a final accounting for approval by the Commission prior to termination of the Disgorgement Fund and discharge of the Fund Administrator.

E. Termination of the Fund

45. Upon final distribution of the funds, the Fund Administrator shall make arrangements for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the Commission in an SEC standard accounting format provided by the staff of the Commission. The

Disgorgement Fund shall be eligible for termination after all of the following have occurred: (1) the Final Accounting by the Fund Administrator has been submitted and approved by the Commission, (2) all taxes and fees have been paid, and (3) all remaining funds or any residual have been transferred to the U.S. Treasury. Staff shall seek an order from the Commission to (1) approve the Final Accounting; (2) approve sending the remaining residual amount to the U.S. Treasury after the final tax payment has been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the staff assigned to this matter that all funds have been expended, to terminate the Disgorgement Fund and discharge the Fund Administrator.

F. Amendments

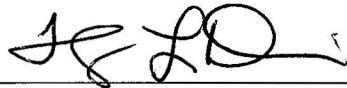
46. The Fund Administrator shall, as provided below, take reasonable and appropriate steps to distribute the Disgorgement Fund according to the procedures set forth in this Plan. Where the Fund Administrator deems necessary, after consultation with the Commission staff, the Fund Administrator may make immaterial modifications to this procedure to effectuate the general purposes of this Plan. However, if material changes are needed, the Fund Administrator will inform the Commission staff and will obtain approval from the Commission prior to implementation of the changes. This Plan may be amended upon the Motion of the Respondents, the Fund Administrator, or upon the Commission's own motion.

47. For good cause shown, the Commission's staff may extend any of the procedural dates set forth in the Plan.

V. NOTICE AND COMMENT PERIOD

48. Notice of this Plan will be published in the SEC Docket, on the Commission's web site [<http://www.sec.gov>] and on the Administrator's website [www.gilardi.com]. A copy of the Distribution Plan may be obtained by submitting a written request to Tracy L. Davis, Esq., Assistant Regional Director, United States Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, CA 94104. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty days of the date of the notice (i) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; or (ii) via the Commission's Internet comment form (www.sec.gov/litigation/admin.shtml); or (iii) by sending an email to rule-comments@sec.gov. Comments submitted by e-mail or via the Commission's web site should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-11676) in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

Respectfully submitted,



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