UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55598 / April 6, 2007

Administrative Proceeding
File No. 3-11814

In the Matter of	:	
COLUMBIA MANAGEMENT ADVISORS, INC. AND COLUMBIA FUNDS DISTRIBUTOR, INC.	:	Order Approving a Distribution Plan
Respondents.	:	

I.

On February 9, 2005, in the above-captioned matter, the Commission issued an Order instituting and simultaneously settling public administrative and cease-and-desist proceedings against Columbia Management Advisors, Inc. and Columbia Funds Distributor, Inc. (the "Columbia Order"). In the Columbia Order, the Commission authorized and established a Fair Fund of $140 million in disgorgement and penalties paid by Columbia Management Advisors, Inc. and Columbia Funds Distributor, Inc. (collectively, "Columbia"). According to the Columbia Order, the Fair Fund is to be distributed to investors injured by market timing in the Columbia mutual fund complex ("Columbia Funds") pursuant to a distribution plan to be developed by an Independent Distribution Consultant (the "IDC"). In February 2005, Columbia engaged Lawrence Hamermesh, a Professor of Corporate and Business Law at Widener University School of Law in Wilmington, Delaware, as the IDC.

On June 5, 2006, the Commission's Division of Enforcement submitted a proposed distribution plan to the Commission's Office of the Secretary (the "Plan"). The Plan provides for distribution to all eligible investors of their proportionate share of the disgorgement and civil penalties paid by Columbia to compensate such investors for injury they suffered as a result of market timing in Columbia Funds for the period spanning at least 1998 through October 2003. The aggregated Fair Fund includes $140 million plus any accumulated interest (the "Columbia Fair Fund"). The IDC will calculate eligible investors' proportionate shares of the Columbia Fair Fund based on information contained in Columbia's records, as well as records obtained from third-party intermediaries, obviating any need for a claims process.

In accordance with the Commission's Rules on Fair Fund and Disgorgement Plans (the "Fair Fund Rules"), 17 C.F.R. § 201.1100, *et seq*., the Plan proposes a Fund Administrator and sets forth, among other things, procedures for the receipt of additional funds; categories of persons potentially eligible to receive proceeds from the Columbia Fair Fund; procedures for providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds; procedures for the administration of the fund, including provisions for filing tax returns; and a proposed date for the termination of the Columbia Fair Fund.

Rust Consulting, Inc., proposed in the Plan as the Fund Administrator, has not posted the bond generally required of third-parties under Fair Fund Rule 1105(c).[1] Rather, the Plan incorporates several layers of protection for the Columbia Fair Fund. Among other things, under the Plan: (1) the Fund Administrator will have no custody, and only restricted control, of the Columbia Fair Fund; (2) assets of the Columbia Fair Fund will be held by the United States Department of the Treasury, Bureau of Public Debt ("Treasury") until no more than two business day before checks or wires are transmitted to eligible investors; (3) upon transfer from Treasury, funds will be held in an escrow account until needed to satisfy a presented check or wire; (4) upon presentment of checks or wire instructions, funds will be subject to a "positive pay file" system before being honored by the escrow bank; (5) both the escrow bank and the Fund Administrator will maintain throughout this process insurance and/or a financial institution bond that covers errors and omissions, misfeasance and fraud; and (6) because the disbursements to investors will be made in tranches, at no time will the funds held at the bank ever approach the amount covered by the insurance.

On July 19, 2006, the Commission published the Plan and issued a Notice of Proposed Distribution Plan and Opportunity for Comment (Exchange Act Release No. 54175) pursuant to Rule 1103 of the Fair Fund Rules, 17 C.F.R. § 201.1103. The Notice advised interested parties that they could obtain a copy of the Plan at http://www.sec.gov/litigation/admin/2006/34-54175-pdp.pdf, or by submitting a written request to Celia D. Moore, United States Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110. The Notice also advised that all persons desiring to comment on the Plan could submit their comments, in writing, no later than August 18, 2006.

[1] Based on estimates provided to the staff of the Commission, the cost of a bond could be in the millions of dollars.

In response to the Notice, the Spark Institute, Inc. ("Spark"), the Coalition of Mutual Fund Investors ("CMFI"), the American Bankers Association ("ABA"), and Merrill Lynch & Co., Inc. ("Merrill Lynch") submitted public comments to the Office of the Secretary. The Commission staff engaged in subsequent communications with the IDC to discuss the issues that each commenter raised in its respective letter. In general, the Spark Letter seeks relief on behalf of intermediaries for non-IRA Retirement Accounts[2] eligible for a distribution under the Plan from fiduciary obligations and costs that may arise from distributions.[3] The CMFI Letter, written on behalf of individual mutual fund investors, expresses concern about the procedures by which the IDC will seek investor information and distribute Fair Fund money in connection with omnibus accounts. The ABA Letter, written on behalf of banks and trust companies, raises questions about procedures by which omnibus account holders will recoup expenses and expresses concern about the accuracy of distribution amounts. Merrill Lynch's letter seeks additional protections for financial intermediaries in terms of repayment of costs, limitation of liability, and transmission of account holder data.

After careful consideration, the Commission has concluded that the Plan should be modified to include, among other things, additional detail concerning procedures applicable to non-IRA Retirement Accounts, and that the Plan should be approved with such modifications. The Commission has further determined that, for good cause shown, the bond required under Fair Fund Rule 1105(c) will be waived.

II.

A. Public Comments on the Plan

1. The Spark Letter

The Spark letter, dated August 18, 2006, is written on behalf of "retirement plan service providers that will be responsible for reconstructing accountholder balance information, making certain allocations, receiving distributions, and making distributions to plan participants who are the intended beneficiaries of a substantial portion of the distribution at issue." In its letter, Spark asserts that, under the Plan and pursuant to Department of Labor ("DOL") April 19, 2006 Field Assistance Bulletin (2006-01) (the "FAB"), a retirement plan record keeper that is not otherwise

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[2] "Retirement Account" as used in the Plan and herein, means any account of an employee benefit plan, as such plans are defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, *et seq*. ("ERISA"), which is not an Individual Retirement Account, whether or not the plan is subject to Title I of ERISA.

[3] The Spark Letter included one additional comment regarding the 180-day deadline for distributions with respect to omnibus accounts described in ¶ 7.6(h) of the Plan. Spark had concerns that Retirement Account service providers would not have adequate time to identify the affected plans and obtain the required distribution instructions. The 180-day deadline applies only to the distributions with respect to omnibus accounts. There is no comparable deadline in ¶ 7.7 for Retirement Accounts. Moreover, even if the 180-day deadline in Plan ¶ 7.6(h) did apply to Retirement Accounts, ¶ 7.6(h) explicitly states that the deadline can be extended for good cause.

a retirement plan fiduciary must choose between assuming fiduciary obligations under ERISA and replicating the IDC's calculations.[4] Spark further asserts that the effort and cost associated with gathering daily accountholder information for a 5 year period substantially limits the ability of a record keeper or other intermediary to use the IDC's methodology and thus, fall within the Safe Harbor. Finally, Spark requests that the Fund Administrator provide an estimate of the potential cost reimbursement of expenses to retirement plan service providers so that the plan record keeper and the Fund Administrator can determine the most cost effective way to handle the distribution. The Commission addresses these issues below.

As is evident from the FAB, fiduciary obligations accompanying a distribution under a distribution plan are not new developments under the law. Rather, these obligations arise under pre-existing ERISA legislation and common law.[5] In sum, assuming fiduciary duties under ERISA is not a new possibility for record keepers or other ERISA plan intermediaries in connection with a distribution of litigation proceeds. Accordingly, requiring intermediaries to distribute funds in accordance with fiduciary duties is neither inappropriate nor unreasonable.

Nevertheless, certain modifications to the Plan are appropriate in order to (1) assist Spark members and others similarly situated in understanding the Plan and complying with their responsibilities under the law; and (2) provide some less costly distribution alternatives in connection with non-IRA Retirement Accounts and thereby increase the likelihood that distributions will be made through the plan participant level:

- To improve the clarity of the section concerning non-IRA Retirement Accounts, "Retirement Accounts" has been defined (Plan, ¶ 7.7(a));

- Alternative distribution methodologies have been added to the Plan to provide non-IRA Retirement Account intermediaries additional means to distribute funds in accordance with their fiduciary, contractual, and/or legal obligations. (Plan, ¶ 7.7(a)).

The foregoing modifications to the Plan address some concerns of Spark members and others similarly situated by enabling them to perform a precise cost benefit analysis, and to

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[4] The FAB, in essence, provides a regulatory safe harbor to intermediaries using an IDC's methodology (the "Safe Harbor"), providing: "[i]f an IDC, as part of its distribution plan approved by the SEC, makes available to an intermediary or requires, as a condition to the distribution, that the intermediary utilize a particular methodology for allocating settlement fund proceeds among individual omnibus account clients, the [DOL] will, as an enforcement matter, view the application of such methodology to the allocation of settlement fund proceeds among individual omnibus account clients as satisfying the requirements of section 404(a) with respect to the methodology for allocating assets to employee benefit plans," as long as such methodology is implemented prudently. FAB at p. 3.

[5] *See, e.g.,* FAB at p. 2 (*citing* ERISA and "ordinary notions of property rights").

develop and seek approval of a distribution methodology in advance of performing any distribution, thereby possibly avoiding the assumption of fiduciary responsibility.[6]

With regard to Spark's request for an estimate of cost reimbursement, the retirement plan service provider, not the Fund Administrator, is in the best position to estimate reimbursement costs. Moreover, in view of the comparatively low cost alternatives that will now be included in the Plan specifically for non-IRA Retirement Accounts, retirement plan record keepers should determine the most cost effective way to handle the distribution.

2. The CMFI Letter

The CMFI comments are in furtherance of "the interests of individual mutual fund investors." In its Comment Letter dated August 17, 2006, CMFI expressed three concerns related to omnibus accounts: the Plan overly relies on the cooperation of financial intermediaries to obtain identity and transaction information; true level of investment activity can only be identified at the sub-account level; and certain scenarios may result in investors not receiving any distribution. The Commission addresses these points below.

CMFI suggests that the Plan should require the Columbia Funds to request from intermediaries, pursuant to Rule 22c-2 of the Investment Company Act (17 C.F.R. § 270.22c-2) ("Rule 22c-2"), the information currently sought through cooperation. Rule 22c-2(a)(2) provides that a fund or its principal underwriter or transfer agent must enter into a written agreement with each financial intermediary of the fund under which the intermediary must agree to "provide promptly, upon request by a fund, the Taxpayer Identification Number of all shareholders who have purchased, redeemed, transferred, or exchanged…," along with the amount and dates of such transactions.[7] Under Rule 22c-2, funds must enter into shareholder information agreements with their intermediaries by April 16, 2007, and must be able to request and promptly receive shareholder identity and transaction information pursuant to shareholder information agreements by October 16, 2007. *See* 71 Fed. Reg. at p. 58262, § III. As a result, Rule 22c-2 cannot be used at this time as a means to request investor information from intermediaries.

CMFI also states that it is difficult to know which trades in omnibus accounts are market timing transactions because the trading data is aggregated, therefore a better estimate of market timing gains would result if the IDC evaluates all account data at the sub-account (i.e., the individual investor) level. However, the Columbia Plan's approach is reasonable under the circumstances, and CMFI's proposal does not offer a demonstrably superior alternative. The IDC estimates that evaluating account data at the investor level would take at least an additional year and would cost as much as several million dollars, not including the costs (that are difficult

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[6] *See* FAB at p. 4 and note 8 ("If the receipt, allocation and/or distribution services of the intermediary, and compensation for such services, are carried out in accordance with the directions and approval of appropriate plan fiduciaries, the intermediary may be able to avoid fiduciary status and issues relating to self-dealing under ERISA.").

[7] See Rule 22c-2(c)(5) (defining "shareholder information agreement").

to estimate) that would be incurred by the omnibus account holders in generating and providing the additional information. Moreover, there would be no net benefit to investors overall in attempting to assess account data at the investor level, because the amount to be distributed is fixed.

CMFI also describes several scenarios in which an individual investor in an omnibus account may not receive any distribution. The first scenario is where an intermediary refuses to accept a distribution on behalf of its omnibus investors if it estimates that the cost of identifying beneficial owners and distributing funds exceeds the distribution amount. CMFI comments that this scenario penalizes investors who are customers of intermediaries with less than efficient recordkeeping systems. While some investors may be at a disadvantage as a result of having selected intermediaries with less efficient systems, the extent of any actual disadvantage is uncertain, unquantified, and speculative.

The second scenario occurs where distributions are less than $10. CMFI suggests that the Plan use the methodology proposed by the IDC in the Banc One proceeding to address *de minimis* distributions.[8] In the Banc One proceeding, all distributions of less than $10 each will be aggregated and then redistributed in sequence to the accounts with the largest provisional distributions less than $10, sequentially assigning a distribution of $10 to each account until the aggregate is depleted. However, the Banc One methodology and the Columbia Plan methodology are similar in substance.[9] Further, the Columbia Plan's proposed methodology is commercially reasonable and this conclusion is not affected by the existence of alternative reasonable methodologies.

Last, CMFI is concerned with the $1000 distribution threshold for omnibus accounts. CMFI believes that investors in a small omnibus account may be left without a distribution because of a potential distribution of less than $1000. CMFI suggests there should be an exception to the $1000 rule for omnibus accounts and/or intermediaries with a small number of investors. The proposed $1000 threshold for omnibus accounts is one of a number of possible reasonable alternatives. To the extent that an omnibus account holder is aware that it would be able to distribute in an economical manner an amount less than $1000, the Columbia Plan allows the holder to use "any distribution technique . . . in the exercise of its reasonable discretion, deem[ed] . . . consistent with its fiduciary, contractual, or other legal obligations."

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8 *See* Proposed Plan of Distribution in *In the Matter of Banc One Investment Advisors Corporation and Mark A. Beeson*, Admin Proc. File No. 3-11530 (August 7, 2006), at Step Twelve.

9 The Columbia Plan, ¶7.5, uses a two step process to minimize distributions of less than $10. First, if an individual shareholder has less than $10 in more than one affected fund, all of those instances will be aggregated into a single account such that the single account distribution is greater than $10. Next, all those individual shareholders whose total aggregate distribution is still less than $10 will be combined, with the resulting sum distributed in $10 units in descending order of dilution harm. The Banc One Plan does not take the first step of aggregating small amounts attributable to individual shareholders. Rather, the Banc Once Plan ranks all provisional distributions of less than $10 in descending order and recomputes each individual distribution as a $10 unit, in descending order from largest to smallest, until the total amount is depleted.

3. **The ABA Letter**

ABA members include banks, savings associations and trust companies. Its comment letter, dated August 18, 2006, questions the procedures by which omnibus account holders will recoup costs and receive distribution amounts.[10]

ABA expressed concern that the Plan may not accurately identify the true level of investment activity in omnibus accounts because the Plan only reflects net investment activity rather than underlying owner activity. Like CMFI, ABA suggests that the IDC should consider full account activity at the individual beneficial owner level. However, as discussed above, the Columbia Plan's methodology is commercially reasonable and the ABA's proposal does not offer a demonstrably superior alternative.

Next, while acknowledging that the Plan appropriately provides that omnibus account holders may recoup costs of reasonable best efforts to identify and distribute funds, ABA suggests that the Plan should define "commercially reasonable best efforts" to include additional staffing costs, as well as other costs necessary either to obtain data or to delegate to other service providers the responsibility for providing owner information. The Plan need not define "commercially reasonable best efforts" in such detail. If a provider requires additional staffing to perform its duties, and that necessity is reasonable, then such out-of-pocket costs will be reimbursed.

4. **The Merrill Lynch Letter**

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10 The ABA letter includes three additional comments. First, ABA discussed concerns with ¶ 7.6(a) of the Plan, which governs distributions to omnibus accounts but specifically exempts from its coverage ordinary trusts, pension plans and 529 plans. ABA questions which method of distribution will be used for trusts that invest in mutual funds through omnibus accounts. The Plan states that trusts, pension plans, and 529 plans are not considered omnibus accounts for purposes of the distribution rules under ¶ 7.6. If a trust is an investor in an omnibus account, however, that trust is treated like any other investor in the omnibus account. ABA also expressed concern that the 180 day distribution deadline for omnibus accounts in ¶ 7.6(h) will be insufficient if (i) omnibus holders are unable to obtain the necessary beneficial owner information from other service providers; (ii) other Fair Fund monies are distributed simultaneously; or (iii) mutual funds begin to request information from banks and other intermediaries as permitted under new Rule 22c-2. However, ¶ 7.6(h) expressly states that the 180 day distribution deadline can be extended for good cause. Last, ABA asks for further guidance on whether a *de minimus* amount can be used to offset costs, returned to the account, or spread to the other beneficial owners if a participant cannot be located. The Plan, ¶¶ 6.2 and 7.9, states that if persons to whom a distribution would otherwise be made cannot be located, the unclaimed amounts are to be added back to the Columbia Funds. In addition, ABA requests further guidance on appropriate algorithm calculations for intermediaries that opt to perform all calculations necessary to make distributions to investors. The Plan ¶ 7.6(c)(iii) states that if an intermediary elects this option, it will be provided the appropriate specifications.

Merrill Lynch's comment letter, dated January 8, 2007, seeks additional protections for financial intermediaries in the form of repayment of out of pocket costs, extending the limitation of liability to include the firms involved in the distribution of funds, and including protections related to the transmission of beneficial owner data.[11]

Merrill Lynch would like the Plan to make clear that financial intermediaries and servicing organizations that expend time and resources ensuring that clients receive funds are reimbursed for the costs of distributing assets and not just the costs of gathering and supplying data. To the extent that Merrill Lynch's comment relates to omnibus account and network level account holders, the Plan as currently written prescribes the contemplated reimbursement.[12] The IDC did not intend for the Plan to reimburse costs incurred by plan administrators of Retirement Accounts, however. As discussed above with respect to the Spark letter, in light of the comparatively low cost alternatives that will now be included in the Plan specifically for non-IRA Retirement Accounts, retirement plan record keepers are best positioned to determine the most cost effective way to handle the distribution.

Merrill Lynch suggests that the Plan contain a clause limiting the liability of financial intermediaries in facilitating the distributions. Prior to Merrill Lynch's comment, the IDC amended the Plan to include a clause which provides, in relevant part, that the Fund Administrator, the IDC, and their designees, agents, and assigns, cannot be held liable to any person except upon a finding of gross negligence or more.[13] This clause expressly excepts the Commission and/or the Columbia Fair Fund from persons subject to the liability limitations. This clause is merely an expression of the current state of the law, however, and neither the Commission nor the IDC has authority to expand or contract the liability of financial intermediaries. If a financial intermediary is subject to any liability, that is because of the intermediary's relationship with its client.

Finally, Merrill Lynch is concerned that the transmission of client sensitive information (e.g. name, address, social security number) will expose financial intermediaries to regulatory and reputation risk if the data is mishandled, disclosed, or distributed in an unauthorized manner.[14] Merrill Lynch suggests that the Plan contain security and confidentiality obligations

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[11] Merrill Lynch also expresses two concerns that were independently addressed by Professor Hamermesh prior to Merrill Lynch's submission. First, the Plan, as modified at ¶ 7.6(c), addresses the suggestion that financial intermediaries have flexibility to choose more than one distribution option for omnibus accounts (for example, choosing one option for open accounts and another for closed accounts). Second, the Plan, as modified at ¶ 7.6(f), addresses the possibility of financial intermediaries being required to gather data that is not available.

[12] *See* the Plan, ¶¶ 7.6(c) and 7.7(b).

[13] *See* the Plan, ¶ 7.17(b).

[14] To the extent Merrill Lynch's comment about regulatory risk refers to the Commission's Regulation S-P (17 C.F.R. Part 248), which limits the ability of financial intermediaries regulated by the Commission to disclose nonpublic personal information to nonaffiliated third parties, Regulation S-P provides exceptions for disclosures for certain purposes, including:

and indemnification of financial intermediaries for any misuse or loss of client data. However, the Plan does not require a financial intermediary to transmit client data to the Fund Administrator; that is necessary only if such a firm elects to have the Fund Administrator handle the distribution. In addition, paragraph 7.6(f) of the Plan already provides that client "information provided by omnibus account holders shall be maintained confidentially and held exclusively by the Fund Administrator, and Respondents shall not have access to that information." Last, in one-on-one communications with financial intermediaries, such firms are likely to request that the Fund Administrator enter into a separate confidentiality agreement, and the Columbia Fund Administrator has already worked out such an agreement with at least one financial intermediary.

B. Additional Modifications

The IDC made the following additional administrative modifications to the Plan in order to create more clarity in the distribution process.

- A footnote has been added to ¶ 7.7(a) to clarify that distributions to Individual Retirement Accounts will be governed by Plan Section VII.A (¶¶ 7.1 – 7.5).

- To address how network level accounts[15] should be handled, new ¶ 7.7(b) in sum provides the nominee the option, similar to an omnibus account holder, of transmitting the distribution to the underlying owner, or giving the Fund Administrator the information necessary to permit Rust to distribute funds directly to the underlying owner.

- To comply with federal, State, or local laws, rules and other applicable legal requirements. *See* 17 C.F.R. § 248.15(a)(7)(i). For distributions ordered by the Commission, this exception would cover disclosures of nonpublic personal information necessary for making the distributions.

- As necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, including if the disclosure is required, or is a usual, appropriate, or acceptable method to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part. *See* 17 C.F.R. §§ 248.14(a), 248.14(b)(2)(ii). In the Columbia Plan, disclosure is arguably required if the financial intermediary elects to have the Fund Administrator handle the distributions.

Moreover, Regulation S-P also imposes limits on the redisclosure and reuse of nonpublic personal information. *See* 17 C.F.R. 248.11. For example, if a financial intermediary subject to Regulation S-P were ordered by the Commission to transmit nonpublic personal information to a nonaffiliated third party for purposes of making distributions under the Columbia Plan, and the intermediary did so in reliance on an exception in §§ 248.14 or 248.15, the third party receiving the information could use it only for the purpose of making the distributions.

[15] Network level accounts are accounts that represent one underlying owner but for which name, address and other necessary identifying information may be maintained by an intermediary. *See* the Plan, ¶ 7.7(b).

- To clarify what happens to distributions by omnibus account holders that go undeliverable or unclaimed for six months, ¶ 7.6(h) was amended to specify that unclaimed payments should be returned to the Fund for inclusion in the holdback provisions under ¶ 7.9 of the Plan.

- Language was added to ¶ 7.6(f) to clarify that (i) omnibus holders could supply opening share balances and subsequent account transactions, in lieu of daily account balances, so as to permit Rust to do the necessary distribution allocations among beneficial owners; and (ii) quarterly, monthly or yearly records could be used not only if daily records are unavailable, but if they are available only at a prohibitive cost (prohibitive being so high as to trigger the right under ¶ 7.6(e) to refuse the distribution).

- Language was added to ¶ 7.6(c) clarifying that an omnibus holder entitled to a distribution of $1000 or more might choose more than one of the three options to distribute the funds, for example to deal differently with open and closed accounts.

- A 90-day deadline was established in ¶ 7.6(c) for omnibus account holders to submit data to the Fund Administrator, if they elect an option requiring such a submission.

- ¶ 7.16 has been amended so that the Fair Fund will not terminate before the payment of taxes (or the reserve for tax liability) is completed.

- To make clear the ability of the Commission and the Columbia Fair Fund to seek redress for conduct less than gross negligence, the Commission and the Columbia Fair Fund have been expressly excluded from the persons subject to a clause limiting the liability of the IDC and the Fund Administrator in new ¶ 7.17(b).

C. <u>The Bond Requirements of Fair Fund Rule 1105(c)</u>

Fair Fund Rule 1105(c) provides:

> *Administrator to Post Bond*. If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed in 11 U.S. C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause shown.

17 C.F.R. § 201.1105(c). The Commission believes that the risk protection provisions of the Plan, generally included in ¶ 7.14 and Appendix A of the Plan, and the high cost of bond coverage, suffice to constitute good cause for waiving the posting of the bond under Rule 1105(c).

Accordingly, IT IS ORDERED that:

A. Pursuant to Rule 1104 of the Fair Fund Rules, 17 C.F.R. § 201.1104, that the Distribution Plan is modified as described above, and approved with such modification;

B. Rust Consulting, Inc. is appointed as the Fund Administrator; and

C. The bond requirement of Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. 201.1105(c), is waived for good cause shown.

By the Commission.

Nancy M. Morris
Secretary