

1 DAVID R. ZARO (BAR NO. 124334)
YALE K. KIM (BAR NO. 188895)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 Email: dzaro@allenmatkins.com
ykim@allenmatkins.com

6 Attorneys for Michael A. Grassmueck, Monitor
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 ALEXANDER JAMES TRABULSE,

15 Defendant.

16 and

17 FAHEY FUND, L.P., FAHEY FINANCIAL
18 GROUP, INC., INTERNATIONAL TRADE &
DATA, and ITD TRADING,

19 Relief Defendants.
20
21

Case No. C 07-4975 (WHA)

DISTRIBUTION PLAN

Date: October 15, 2009

Time: 8:00 a.m.

Place: Courtroom 9, 19th Floor
United States District Court
Northern District of California-
San Francisco Division
450 Golden Gate Avenue
San Francisco, CA 94102

I.

INTRODUCTION

This Distribution Plan, when approved by the Court, will be the instrument by which Allowed Claims (as defined below) against the relief defendants Fahey Fund, L.P.; Fahey Financial Group, Inc.; International Trade & Data; and ITD Trading ("Relief Defendants") are satisfied. Further information about this case and distribution of the Relief Defendants' estate ("Estate") assets proposed herein is contained in the Memorandum of Points and Authorities in Support of the Motion for Order Approving Distribution Plan and Authorizing Interim Distribution to Holders of Allowed Claims and the Declaration of Michael A. Grassmueck, filed concurrently herewith.

II.

DEFINITIONS

Unless the context otherwise requires, the following terms have the following meanings when used in their capitalized forms herein. Such meanings are equally applicable to both the singular and plural forms of the terms.

Administrative Claim. Claims arising from post-Monitor Date activities such as services rendered by the Monitor and for the Monitor by attorneys and accountants, goods and services provided by vendors, or taxes assessed or incurred post-Monitor Date.

Allowed Claim. Any Claim arising from pre-Monitor Date activities for which a proof of claim was submitted to the Monitor prior to the Claims Bar Date, and to which (a) no objection was filed, or (b) an objection was filed and an order was entered by the Court allowing the Claim at a specified amount. Claims arising from pre-Monitor Date activities for which a proof of claim was either submitted to the Monitor prior to the Claims Bar Date, or past the Claims Bar Date, and to which no objection was filed are allowed in the amount stated on the proof of claim. Finally, any Claims otherwise allowed by the Monitor pursuant to the Order granting the Omnibus Motion Regarding Claims, entered by this Court.

Cash. All cash and cash equivalents of Relief Defendants held by the Monitor, plus the amount of \$250,001 which constitutes funds obtained from a disgorgement and civil penalty

1 judgment against Defendant Alexander James Trabulse in this proceeding, entered on April 7,
2 2008. These funds were earmarked for distribution to investors only pursuant to the establishment
3 of a Fair Fund under Section 308(a) of the Sarbanes-Oxley Act of 2002, and are not subject to
4 reduction for payment of any Administrative Claim.

5 **Claim.** Any right to payment from Relief Defendants whether or not such right is reduced
6 to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal,
7 equitable, secured, or unsecured.

8 **Claims Bar Date.** February 2, 2009.

9 **Court.** United States District Court for the Northern District of California, San Francisco
10 Division.

11 **Estate Assets.** All assets including Cash, claims, causes of action, or rights of recovery
12 held by the Monitor on behalf of the Estate.

13 **Final Order.** An order, judgment, or decree (or any revision, modification, and/or
14 amendment thereof) of the Court which has not been reversed, set aside, or stayed and as to which
15 the time to appeal, to petition for certiorari or for rehearing, or to move for relief, to amend or
16 alter, or to make additional findings of fact has expired and as to which no appeal, petition for
17 certiorari or rehearing, or other proceedings for relief, to amend or alter, or make additional
18 findings of fact shall then be pending.

19 **Hold-Back Funds.** Cash in the amount of \$250,000 to satisfy Allowed Administrative
20 Claims in full in accordance with Section IV.E.

21 **Monitor Case.** The instant litigation, pending in this Court, known as *Securities and*
22 *Exchange Commission v. Alexander James Trabulse, et al.*, Case No. 07-4975 (WHA), the
23 Honorable William H. Alsup, presiding.

24 **Monitor Date.** December 17, 2007, the date on which the Order Appointing Monitor And
25 Other Ancillary Relief, which authorized the appointment of Michael A. Grassmueck, as corporate
26 monitor (the "Monitor") with regard to the Relief Defendants was entered.

27

28

1 of 37.72% of their allowed claims. The Monitor anticipates additional proceeds realized from
2 sales occurring following the approval of this Distribution Plan, and reserves the right to increase
3 the distribution percentage, to an amount determined by the Monitor. Each holder of an Allowed
4 Claim will receive a *Pro Rata* Share of that sum. Interim distributions shall be made in Cash in
5 the form of a check in U.S. Dollars.

6 C. Final Distribution

7 Holders of Allowed Claims shall receive a final *Pro Rata* Share distribution from Cash
8 other than Hold-Back Funds as soon as practicable after the Court has entered a Final Order
9 authorizing a final distribution of Estate Assets to holders of Allowed Claims. Final distributions
10 shall be made in Cash in the form of a check in U.S. Dollars.

11 D. Uncashed Distributions

12 The Monitor shall conduct a reasonable investigation into Interim and Final Distribution
13 payments that remain uncashed sixty (60) days after they were issued, for the purpose of
14 identifying correct addresses for the applicable holders of Allowed Claims. If a correct address
15 can be identified, the payment shall be reissued as soon as practicable.

16 E. Reserve for Payment of Administrative Claims

17 In connection with filing (a) the Monitor's Final Report to the Court, (b) Final Fee
18 Applications of the Monitor and his professionals, and (c) a Motion for Order Authorizing Final
19 Distribution of Estate Assets, the Monitor has proposed an amount of Cash to be reserved to
20 satisfy anticipated Administrative Claims through discharge of the Monitor and fulfillment of his
21 obligations under the Distribution Plan. The amount of the Hold-Back Funds is subject to Court
22 approval.

23 F. Distribution Agent

24 In his discretion, the Monitor may determine the most cost-effective and reliable means of
25 issuing and delivering checks to holders of Allowed Claims, including, if appropriate, use of a
26 bank or other check-processing service.

27 ///

28 ///

V.

RETENTION OF JURISDICTION

The Court shall have and retain exclusive jurisdiction of matters arising out of, and related to, the Monitor Case and the Distribution Plan, among other things, for the following purposes:

1. To consider any modifications to the Distribution Plan, to cure any defect or omission, or reconcile any inconsistency in the Distribution Plan or any order of the Court.
2. To hear and determine any objection or other dispute with respect to Claims.
3. To protect the Estate Assets from adverse Claims or interference inconsistent with the Distribution Plan.
4. To issue such orders in aid of execution of the Distribution Plan as may be necessary and appropriate.
5. To hear and determine all applications for compensation and reimbursement of expenses of the Monitor and his professionals.
6. To recover all Estate Assets, wherever located.
7. To hear and determine all litigation, causes of action and all controversies, suits, and disputes that may arise in connection with the interpretation, implementation, or enforcement of the Distribution Plan.
8. To enter a Final Decree closing the Monitor Case and discharging the Monitor.

VI.

MISCELLANEOUS PROVISIONS

The Distribution Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Distribution Plan. The headings used herein are inserted for convenience only and neither constitute a portion of the Distribution Plan nor in any manner shall affect the provisions or interpretation(s) of the Distribution Plan. All notices, requests, and demands to or upon the Monitor to be effective shall be in writing (including, without limitation, by e-mail or facsimile transmission) and addressed as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael A. Grassmueck, as Monitor
The Grassmueck Group
P. O. Box 3649
Portland, Oregon 97208-5248

with a copy to:

David R. Zaro, Esq.
Yale K. Kim, Esq.
Allen Matkins Leck Gamble
Mallory & Natsis LLP
515 S. Figueroa Street, 9th Floor
Los Angeles, California 90071-3309

Dated: September 9, 2009

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
YALE K. KIM

By: Yale K Kim
Yale K Kim
Attorneys for Michael A. Grassmueck,
Monitor