

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff

v.

ALTERNATE ENERGY HOLDINGS,
INC., et al.,

Defendants and Relief Defendants.

Case No. 1:10-cv-621-EJL

**ORDER APPROVING AMENDED
DISTRIBUTION PLAN;
DISTRIBUTION PLAN**

This action originated on December 16, 2010 when the Securities and Exchange Commission (“Commission” or “SEC”) filed the initial Complaint against the Defendants alleging violations of the antifraud provisions of federal securities laws. Dkt. 1.) Judgments were ultimately entered in favor of the SEC and the Court ordered the payment of disgorgement, prejudgment interest, and a civil penalty to the SEC. (Dkt. 323, 326, 334, 346.)

On September 6, 2017, the Court entered an Order approving the Distribution Plan for the funds collected by the SEC to be returned to the victims of the fraud. (Dkt. 354.) The SEC has now filed a Motion to Amend the Distribution Plan to revise how eligible loss amounts will be calculated in order to avoid unfairly penalizing and excluding potential claimants. (Dkt. 359, 360.)¹ In addition, the SEC proposes amending the Distribution Plan to provide shorter time periods for

¹ Paragraph 52 of the Distribution Plan provides for amendments. (Dkt. 354.)

the Final Determination Notice Mailing, Payment File preparation, and Check Cashing Period in order to expedite the distribution process. Dkt. 359, 360.) No response to the Motion has been filed and the time for doing so has passed.

Having reviewed the record in this case, the proposed amendments, and the parties arguments, the Court finds good cause has been shown to grant the SEC's Motion and to approve the Amended Distribution Plan. The amendments to the eligible loss calculation will ensure that all potential claimants have a right to participate in the claims process and the shortened time periods will expedite the distribution process. The Court finds the amendments are fair and reasonable and will facilitate a more judicious and efficient distribution process. *See S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010); *S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 738 9th Cir. 2005) (District court has broad discretion over the supervision and administration of receivership.).

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Motion to Amend Distribution Plan (Dkt. 359) is **GRANTED** as follows:

AMENDED DISTRIBUTION PLAN

I. Definitions

1. As used in this Amended Distribution Plan the "Distribution Plan"), the following definitions shall apply:

- a. **"Check-Cashing Period"** means the sixty (60) days following the mailing of Distribution Payments to Eligible Claimants in accordance

with this Distribution Plan.

- b. **“Claim Form”** means the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this Distribution Plan. The Claim Form will require, at a minimum, sufficient documentation reflecting any Potential Claimant’s purchases and dispositions of Eligible Securities during the Relevant Period and the tax identification number of the Potential Claimant.
- c. **“Claims Bar Date”** means the date established in accordance with this Distribution Plan by which Claim Forms must be postmarked by or submitted electronically in order to receive consideration under the Distribution Plan. Subject to certain extensions provided for in this Distribution Plan, the Claims Bar Date will be one hundred twenty (120) days from the Initial Mailing.
- d. **“Claims Packet”** means the materials relevant to submitting a claim that may be provided to Potential Claimants known to the Distribution Agent or to those who obtain such materials through a website or other appropriate delivery mechanisms. These materials will include a copy of the Distribution Fund Notice and a Claim Form together with instructions for the completion of the Claim Form).
- e. **“Days”** means calendar days, unless otherwise specified herein.
- f. **“Determination Notice”** means the notice sent by the Distribution Agent to Potential Claimants that submitted a deficient or ineligible

Claim Form. The Determination Notice will provide to each Potential Claimant whose claim is deficient, the reasons for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding further necessary actions. In the event the claim is ineligible, the Determination Notice will state the reason for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim.

- g. **“Distribution Agent”** refers to Rust Consulting, Inc. collectively with all employees, agents, consultants, or independent contractors of such firm), which has been previously appointed by the Court to administer and distribute the Distribution Fund in accordance with the terms of the Distribution Plan and the Court's orders.
- h. **“Distribution Fund”** refers to the \$2,000,000 turned over to the SEC by Relief Defendant Black LoBello, pursuant to the Court’s Order of December 17, 2015 (Dkt. 335), and any interest and income earned thereon, and any additions as may be provided by future Court order.
- i. **“Distribution Fund Notice”** means a written notice from the Distribution Agent to Potential Claimants informing them of the Distribution Fund and the eligibility requirements, and explaining how to submit a claim. The notice will be both mailed and published according to the schedule detailed herein.
- j. **“Distribution Payment”** means the payment to an Eligible Claimant

in accordance with the terms of the Distribution Plan.

k. **“Distribution Plan”** means the Distribution Plan in the form approved by the Court.

l. **“Eligible Claimant”** means a Potential Claimant who suffered a loss as a result of transactions in Eligible Securities during the Relevant Period and who is determined by the Distribution Agent to be eligible for a Distribution Payment from the Distribution Fund. An “Eligible Claimant” does not include:

- i. Any officer or director of the AEHI, or any subsidiary or affiliate of AEHI directly involved in the conduct detailed in the Complaint, as amended;
- ii. Any employee or former employee of AEHI or any of its affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Complaint, as amended;
- iii. Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the conduct detailed in the Complaint, as amended, unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Claim Form;
- iv. Any affiliates, assigns, creditors, heirs, distributees,

spouses, parents, children or controlled entities of any of the foregoing Persons described in 1.i – 1.iii;

v. The Distribution Agent and those persons assisting the Distribution Agent in its role as Distribution Agent; or

vi. Any purchaser or assignee of another Person’s right to obtain a recovery from the Distribution Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law.

m. **“Eligible Loss Amount”** is the amount of loss an Eligible Claimant incurred through the investment in Eligible Securities during the Relevant Period calculated in accordance with the Plan of Allocation, as detailed in Appendix 1, attached hereto. An Eligible Claimant’s Eligible Loss Amount may be reduced by the amount of i.) any compensation for the loss that resulted from the conduct described in the Amended Complaint in this case that was received from another source, e.g., class action settlement), to the extent known by the market.

n. **“Eligible Securities”** refers to restricted shares of AEHI common stock purchased in exchange for money (but not in exchange for non-monetary services or goods) through private placement offerings during the Relevant Period.

- o. **“Final Determination Notice”** means the Distribution Agent’s written reply to each Potential Claimant who timely responded to the Determination Notice in an effort to seek reconsideration of an ineligible claim. The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim. Only Claimants whose claims remain ineligible after responding to the Determination Notice will receive a Final Determination Notice.
- p. **“Net Distribution Fund”** means the Distribution Fund, plus earned interest, less any amounts expended or to be expended for administering the Distribution Fund (e.g., reasonable fees and expenses incurred or to be incurred in administering the Distribution Plan and the payment of taxes on the Distribution Fund).
- q. **“Notice Publication”** means the publication of the Distribution Fund Notice, or a notice closely resembling the Distribution Fund Notice, in print or internet media in a manner deemed appropriate by the Distribution Agent and not unacceptable to the Commission staff.
- r. **“Person”** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

- s. **“Plan of Allocation”** means the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is set forth in Appendix 1 and attached hereto.
- t. **“Potential Claimants”** means those Persons, or their lawful successors, identified by the Distribution Agent as having possible claims to recover from the Distribution Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Distribution Fund under this Distribution Plan.
- u. **“Relevant Period”** means the period of time commencing on October 1, 2006 and continuing until December 13, 2010.
- v. **“Tax Administrator”** refers to Damasco & Associates LLP, now known as Miller Kaplan & Arase LLP, the firm which previously has been appointed by the Court as the Tax Administrator in this action.

II. Administration of the Distribution Fund

A. Identification of and Notice to Potential Claimants

2. The Distribution Agent will, insofar as is practicable, use its best efforts to identify Potential Claimants from a review of private placement subscription agreements (and related information) provided by the Commission staff and originally obtained during from Defendants or third parties.

3. Within thirty (30) following the entry of this Court of an Order approving this Distribution Plan, the Distribution Agent will create a claims database consisting of the records described above.

4. The Distribution Agent will design and submit a Claims Packet, including a Distribution Fund Notice and a Claim Form, to the Commission staff for review and approval.

5. Before commencing any mailing, the Distribution Agent will run a National Change of Address search to obtain updated addresses for all Potential Claimants recorded in the database.

6. The Distribution Agent will commence mailing the Distribution Fund Notice to all Potential Claimants known to the Distribution Agent within sixty (60) days following the entry by this Court of an Order approving the Distribution Plan “Initial Mailing”). Each Distribution Fund Notice will notify the Potential Claimant of the Distribution Fund, contain a brief description of the eligibility requirements, generally describe the Distribution Fund’s claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Claim Form by request or from the Distribution Fund website, and provide instructions for submitting a claim.

7. This deadline will be extended proportionally to any delay in delivery of the data files to the Distribution Agent.

8. Claims Packets will be available on the Distribution Fund website to brokerages and other institutions that hold Eligible Securities in “street name” for the benefit of their customers who are the beneficial owners of the securities. The Distribution Agent will promptly provide a Claims Packet to any Potential Claimant upon request.

9. Within twenty (20) days of the Initial Mailing, the Distribution Agent will carry out the Notice Publication, which will notify the public of the Distribution Fund, contain a brief description of the eligibility requirements, generally describe the Distribution Fund’s claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Claim Form by request or from the Distribution Fund website, and provide instructions for completing and submitting a Claim Form.

10. The Distribution Agent will establish and maintain a website devoted solely to the Distribution Fund. The Distribution Fund website, located at www.SECAEHIDistributionFund.com, will make available a copy of the Distribution Fund Notice, the approved Distribution Plan, and provide information regarding the claims process and eligibility requirements for participation in the Distribution Fund in the form of frequently asked questions. The website will also include a copy of a Claim Form and related materials in a downloadable form, and such other information covering process or substance that the Distribution Agent believes will be beneficial to Potential Claimants. The Commission staff retains the right to review and approve any material posted on the Distribution Fund website.

11. The Distribution Agent will provide a copy of the Distribution Plan and Distribution Fund Notice to the Commission staff to post the approved Distribution Plan and Distribution Fund Notice on the Commission's website, Information for Harmed Investors page, located at <https://www.sec.gov/divisions/enforce/claims.htm> and establish a link to the Distribution Fund website.

12. The Distribution Agent will establish and maintain a toll-free telephone number for Potential Claimants to call to hear prerecorded information about the Distribution Fund, twenty-four hours a day, seven days a week. Potential Claimants who call the toll-free number will have the option of leaving a voice message so that a representative can return their call.

The Distribution Agent will advise the Commission staff of the toll-free telephone number. The Distribution Agent will also establish and maintain a traditional mailing address and an email address to enable Potential Claimants to correspond with the Distribution Agent, which will be provided to Commission staff.

13. The Distribution Agent will attempt to locate any Potential Claimant whose mailing is returned by the United States Postal Service ("USPS") as "undeliverable" and will document all such efforts. The Distribution Agent will utilize all means reasonably available to obtain updated addresses in response to undeliverable notices, and forward any returned mail for which an updated address is provided or obtained. The Distribution Agent will make available, upon request by the Commission staff, a list of all Potential Claimants

whose Distribution Fund Notices have been returned as “undeliverable” due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

B. Claims Process

14. The Claims Bar Date will be clearly identified on all materials as the calendar date one hundred twenty (120) days from the Initial Mailing. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such Potential Claimant's claim, together with all required supporting documentation postmarked on or before the Claims Bar Date. A Claim Form that is postmarked after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent after consultation with Commission staff.

15. The burden to ensure the Claim Form is properly and timely postmarked and to prove receipt of the claim by the Distribution Agent will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their claims in a manner that will enable them to prove receipt of the claim by the Distribution Agent.

16. Claim Forms must be properly filled out per the instructions provided by the Distribution Agent, and must be accompanied by such documentary evidence as the Distribution Agent deems necessary or appropriate to substantiate the claim. Without limitation, this information may include documentary evidence of purchases of Eligible Securities during the Relevant Period, as well as holdings of Eligible Securities on pertinent dates.

17. All claims and supporting representations necessary to determine a Potential Claimant's eligibility to receive a distribution from the Distribution Fund must be verified by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant, unless the Distribution Agent accepts such declaration from a Person authorized to act on the Potential Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

18. The Distribution Agent will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Distribution Fund by reviewing the claim data and supporting documentation (or the lack thereof), verifying the claim, and calculating each Potential Claimant's Eligible Loss Amount pursuant to the Plan of Allocation. Each Potential Claimant will have the burden of proof to establish the validity and amount of his, her, or its claim, and that they qualify as an Eligible Claimant. The Distribution Agent will have the right to request, and the Potential Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

C. Deficiency and Claim Determination Processes

19. The Distribution Agent will provide a Determination Notice to each Potential Claimant that submitted a deficient or ineligible Claim Form, setting forth the Distribution Agent's conclusions concerning such claim. The Determination Notice shall be provided to such affected claimants within sixty (60) days after the Claims Bar Date.

20. The Determination Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reasons for the deficiency (e.g., failure to provide required information or documentation). The Determination Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any Potential Claimant with a deficient claim will have forty-five (45) days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

21. In the event the claim is denied, in whole or in part, the Determination Notice will state the reason for such denial. Any Potential Claimant seeking reconsideration of a denied claim must advise the Distribution Agent in writing within forty-five (45) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim.

22. The Distribution Agent will send, as appropriate, a Final Determination Notice to all Potential Claimants who responded to the Determination Notice in an effort to seek reconsideration of a denied claim. The Distribution Agent will send such Final Determination Notices no later than twenty-one (21) days following receipt of documentation or information in response to the Determination Notice, or such longer time as the Distribution Agent determines is necessary for a proper determination concerning the claim. Only Claimants whose claims remain ineligible after responding to the Determination Notice will receive a Final Determination Notice.

23. The Distribution Agent may consider disputes of any nature presented by Potential Claimants, and will consult Commission staff as appropriate. The Distribution Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the Distribution Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

24. The Potential Claimant has the burden of notifying the Distribution Agent of a change in his, her, or its current address and other contact information.

25. The receipt of Eligible Securities by gift, inheritance, devise, or by operation of law, or in exchange for non-monetary goods or services rendered, will not be deemed to be a purchase of Eligible Securities, nor will it be deemed an assignment of any claim relating to the purchase of such securities unless specifically so provided in an instrument of inheritance. However, the recipient of Eligible Securities as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Distribution Fund to the extent the original purchaser would have been eligible under the terms of this Distribution Plan. Only one claim may be submitted with regard to the same transactions in Eligible Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored, assuming it is supported by proper documentation.

26. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include individual retirement accounts, and such plan's

participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will issue any Distribution Payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potential Claimants, the Distribution Agent will endeavor to distribute funds directly to the beneficial accountholders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent.

III. Establishment of the Escrow Account

27. Prior to disbursement of the Net Distribution Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank ("Bank"), not unacceptable to Commission staff. The Distribution Agent will establish an escrow account (the "Escrow Account") pursuant to an escrow agreement (the "Escrow Agreement") to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Distribution Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account e.g., controlled distribution account, managed distribution account, linked checking and investment account (the "Distribution Account") for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Distribution Fund as

custodian for the distributees of the Distribution Plan. The name of each account will be in the following form: “SEC v. AEHI Distribution Fund, as custodian for the benefit of investors allocated a distribution pursuant to the Distribution Plan in SEC v. Alternate Energy Holdings, et. al., Case No. 10-cv- 00621-EJL (D. Idaho).”

28. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States (“U.S.”) Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants or tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest 100% of their assets 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 AAA-rated Money Market Mutual Funds’ investments in short term U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

29. In consultation with the Commission staff, the Distribution Agent will work with the Bank on an ongoing basis to determine an allocation of funds between the Escrow Account and Distribution Account that will preserve earnings, if possible, while providing maximum protection for the Distribution Fund.

30. All interest earned will accrue for the benefit of the Distribution Fund and all costs associated with the Escrow and Distribution Accounts.

31. Upon receipt of the monies from the Commission into the Escrow Account, the Distribution Agent will provide a signed receipt to the Commission staff within ten (10) business days. The Commission staff will file the receipt with the Court.

32. Upon transfer from the Commission, the assets of the Distribution Fund will be held in the Escrow Account, separate from Bank assets, until the presentation of Distribution Payments. All Distribution Payments via check will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Distribution Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

33. The Distribution Agent will provide copies of the bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and will assist the Tax Administrator in obtaining any other statements, as necessary.

IV. Distribution

34. The Net Distribution Fund will be distributed to Eligible Claimants as provided under the terms of this Distribution Plan. An Eligible Claimant's Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Appendix 1 to this Distribution Plan, will be used to determine the amount of their Distribution Payment.

35. The Distribution Agent will disburse the Net Distribution Fund to all Eligible Claimants, in one or more tranches, once all Claim Forms have been processed and all Potential Claimants whose claims have been denied or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth herein. No distribution will be conducted without prior authorization by an Order of the Court.

36. Within fourteen (14) days following the date the Distribution Agent has mailed the Final Determination Notices, the Distribution Agent will prepare a list of all Eligible Claimants, the Eligible Loss Amount, and the Distribution Payment of each Eligible Claimant ("Payment File"). This Payment File shall be accompanied by a reasonable assurances letter as to the completeness and accuracy of the Payment File. The Distribution Agent will also prepare the relevant materials to effect a distribution, including recommending an estimated distributable amount from the Net Distribution Fund. The Distribution Agent will retain a prudent reserve to pay administrative fees and expenses, and any federal, state or local taxes payable in connection with the Distribution Fund.

37. After receipt and acceptance of the Payment File, the Commission staff will petition the Court for authority to disburse the entire balance of the Net Distribution Fund from the Commission to the Distribution Agent for distribution to Eligible Claimants pursuant to the Distribution Plan. In conjunction with any motion seeking approval of a distribution, the Payment File will, upon request, be made available to the Court under seal.

38. Following the Court's approval of the Commission's petition for the authority to distribute the Net Distribution Fund to Eligible Claimants as provided for in this Distribution Plan, the Distribution Agent will commence the distribution to Eligible Claimants as promptly as possible following the transfer of funds.

39. Should the total amount of the Eligible Loss Amounts of all Eligible Claimants exceed the Net Distribution Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a pro rata distribution formula. This formula will be the fraction of the Eligible Loss Amount of each Eligible Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants.

40. No Distribution Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds the de minimis amount of \$10.00.

41. The Distribution Agent in its exclusive discretion may, but will have no obligation to, aggregate accounts held by a Person in the same legal capacity in determining Eligible Loss Amounts and Distribution Payments amounts.

42. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of sixty (60) days from the date of issuance. Accordingly, checks that are not negotiated

within this Check-Cashing Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided below. Where an Eligible Claimant's check is not negotiated within the Check-Cashing Period and has been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Net Distribution Fund.

43. Payments to Eligible Claimants will be preceded or accompanied by a communication that includes, as appropriate:

- a. A statement characterizing the distribution;
- b. A statement that checks will be void and cannot be reissued after sixty (60) days from the date the original check was issued;
- c. A statement that reissued checks will expire on the later of sixty (60) days from the date of the original check or thirty (30) days from the date of the reissued check;
- d. A statement that the tax treatment of the distribution is the responsibility of the Eligible Claimant and that the Eligible Claimant should consult his, her, or its tax advisor for advice regarding the tax treatment of the distribution; and
- e. Contact information for the Distribution Agent for questions regarding the Distribution Payment.

44. Distribution Payments and/or accompanying communications will clearly indicate that the money is being distributed from a Distribution Fund established to compensate investors for harm suffered as a result of their investment in AEHI. Any such

communication, letter or other mailing to Eligible Claimants characterizing the distribution will be submitted to the Commission staff and the Tax Administrator for review and approval.

45. Under no circumstances will the Distribution Agent, its employees or its agents incur any liability to any Person for making a distribution in accordance with the Order of the Court approving the distribution and the schedules of Eligible Claimants, and all Persons shall be enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a Distribution Payment from the Distribution Fund, such Eligible Claimant will be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be barred from prosecuting or asserting any such claims.

V. Post Distribution

A. Handling of Returned or Uncashed Checks

46. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void at the later of sixty (60) days from issuance of the original check or thirty (30) days from the reissuance, and in no event will a replacement check be reissued after sixty (60) days from the date of original issuance.

47. The Distribution Agent will research and attempt to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible Claimant has the burden of providing the Distribution Agent

with any changes to his, her, or its mailing address. The Distribution Agent will mail a reissued check to the updated address, subject to the time limits detailed herein.

48. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (e.g., as the result of a name change because of marriage or divorce, or as the result of death), any request by an Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name must be documented to the satisfaction of the Distribution Agent. If such change is properly documented, in the sole discretion of the Distribution Agent, the Distribution Agent will issue an appropriately redrawn Distribution Payment, subject to the time limits detailed herein.

49. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow up on the status of uncashed Distribution Payments over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of uncashed checks at the request of Commission staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

B. Disposition of Remaining Funds

50. If, after the distribution is complete, all tax obligations of the Distribution Fund have been satisfied, and funds remain in the Net Distribution Fund, the Commission staff, in consultation with the Distribution Agent, will return the remaining funds to the Commission for transfer to the United States Treasury.

VI. The Distribution Agent

51. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Distribution Plan. This will include, among other things,

taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and toll-free number to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Net Distribution Fund in accordance with this Distribution Plan.

52. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Distribution Plan upon agreement with Commission staff. If a change is deemed to be material by Commission staff, Court approval is required prior to implementation by amending the Distribution Plan.

53. The Distribution Agent may extend any procedural deadline contained in the Distribution Plan for good cause shown, if agreed upon by the Commission staff.

54. The Distribution Agent is authorized to enter into agreements with institutions “Institutions”) as may be appropriate or necessary in the administration of the Distribution Fund, provided such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

55. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Distribution Fund (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties). Copies of invoices will be provided to the Commission staff on a monthly basis. All payments to the Distribution Agent will be paid from the Distribution Fund after review by Commission staff and approval of the Court.

56. The Distribution Agent may be removed at any time by the Court, and replaced with a successor. In the event the Distribution Agent decides to resign, it will first give written notice to the Commission staff and the Court of such intention, and such resignation will not be effective until the Court has appointed a successor. The Distribution Agent will then follow such instructions as such successor or the Court provides in turning over management of the Distribution Fund.

57. The Distribution Agent will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction. In addition, the Distribution Agent will shut down the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Distribution Fund six (6) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Distribution Agent determines with the concurrence of the Commission staff.

VII. Tax Compliance

58. The Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treasury Regulations §§ 1.468B-1 to 1.468B-5, including, but not limited to:

- a. Obtaining a taxpayer identification number;
- b. Submitting requests for funds from the Distribution Fund that are necessary for the timely payment of all applicable taxes, making timely payment of taxes for which the Tax Administrator has received funds, and filing all applicable returns; and
- c. Satisfying any information, reporting, or withholding requirements in connection with the distribution of the Distribution Fund.

59. When the Distribution Fund is transferred to the Escrow Account for distribution, the Distribution Agent will tender to the Tax Administrator funds necessary to pay taxes upon the request of the Tax Administrator. The Commission will approve and arrange payment of the tax obligations without further approval of the Court, pursuant to the Order Granting Plaintiff Securities and Exchange Commission’s Motion to Appoint a Tax Administrator and Distribution Agent, issued by the Court on January 10, 2017.

60. All fees, costs and expenses of the Tax Administrator will be paid by the Distribution Fund as part of the cost of the administration of the Distribution Fund. Any taxes on interest earned by the Distribution Fund will be paid by the Distribution Fund.

VIII. Distribution Fund Reporting and Accounting

61. The Distribution Agent will provide to Commission staff, who will file with the Court, a quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and will provide additional reports and quarterly account statements within thirty (30) days after the end of every quarter thereafter as detailed below.

62. Once the money has been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Distribution Agent.

63. The status report and quarterly account statement will inform the Court and the Commission staff of the activities and status of the Distribution Fund during the relevant reporting period, and once funds are transferred to the Distribution Agent will specify, at a minimum:

- a. The location of the account(s) comprising the Distribution Fund; and
- b. An interim accounting of all monies in the Distribution Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Distribution Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan.

64. The Distribution Agent will prepare a final report and final accounting, in a format to be provided by the Commission staff, when the Distribution Fund administration is complete. In compiling the final accounting, the Distribution Agent will coordinate with

the Tax Administrator. The Commission staff will file the final report and final accounting with the Court.

65. Commission staff, or other relevant party, shall provide the Distribution Agent with any and all account information relating to the Distribution Fund that may be required to meet reporting obligations; including providing copies of any account statements that the Distribution Agent may request.

IX. Termination of the Distribution Fund

66. Once all Distribution Payments have been negotiated or voided, any funds remaining in the Escrow and Distribution Accounts will be transferred to the Commission.

67. The Distribution Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:

- a. A final report and final accounting has been submitted to and approved by the Court;
- b. All taxes, fees and expenses have been paid; and
- c. All remaining funds have been transferred to the Commission.

68. Once the Distribution Fund has been terminated, no further claims will be allowed and no additional Distribution Payments will be made whatsoever.

X. Limitation of Liability

69. The Court may amend this Distribution Plan from time to time; and retains exclusive jurisdiction over all claims arising in connection with this Distribution Plan, including, but not limited to, claims against the Distribution Agent asserting liability for violation of any duty imposed by this Distribution Plan or other Court order.

70. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Distribution Fund, for a pecuniary loss to the Distribution Fund, for any action taken or omitted by the Distribution Agent in connection with the Distribution Plan and all Potential Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of negligence or reckless disregard of duty under this Distribution Plan.

71. The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other than the Distribution Agent), including, without limitation, the Defendants and any Defendant's past or present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.



DATED: May 9, 2019

A handwritten signature in black ink that reads "Edward J. Lodge". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Edward J. Lodge

U.S. District Judge

Appendix 1 – SEC v. Alternate Energy Plan of Allocation

The Distribution Fund will be distributed to Eligible Claimants pursuant to the terms of the Plan of Allocation.

CALCULATION OF ELIGIBLE LOSS

1. Based on the steps set forth below, “Eligible Loss Amount,” shall be calculated for shares of Alternate Energy Holdings, Inc. “AEHI” restricted common stock purchased through private placement offerings during the Relevant Period, listed in the Claim Form, and for which adequate documentation is provided.
2. Purchase Amount of shares before fees and expenses will be calculated from offering documents and summed for all purchases of restricted shares through private placement offerings during the Relevant Period.
3. The Sales Proceeds of any shares acquired through private placement offerings during the Relevant Period and sold in the open market will be calculated. The number of shares sold in the open market in excess of the number of shares purchased in the open market and the Sales Proceeds on such shares will be determined by applying the FIFO methodology described below.
4. Eligible Loss Amount will be calculated as Purchase Amount less Sales Proceeds for restricted shares purchased through private placement offerings during the Relevant Period.

GENERAL PROVISIONS

5. Exercise of option contracts or the conversion of preferred stock into common stock will be considered purchases or sales of common stock as of the date of the exercise or conversion.
6. Subject to the limitations set forth in the Distribution Plan, if a Potential Claimant acquired restricted shares by way of gift, inheritance, devise or operation of law, such claim will be computed using the date and price of the original purchase and not the date and price of transfer, gift or inheritance. To the extent those shares were not originally purchased through private placement offerings in the Relevant Period, the Eligible Loss for shares in that acquisition shall be calculated as \$0.00.

USE OF “FIFO” METHODOLOGY FOR ELIGIBLE CLAIMANTS WHO MADE MULTIPLE TRANSACTIONS DURING THE RELEVANT PERIOD

7. For Eligible Claimants who held shares before the beginning of the Relevant Period and/or made multiple purchases, acquisitions, or sales of AEHI common stock during the Relevant Period, the sales of shares will be matched in chronological order first against their closing position the day before the beginning of the Relevant Period, until that day's closing position has been exhausted; then remaining sales after the beginning of the Relevant Period, not including the private placement purchased shares will be matched in chronological order against purchases or acquisitions made in the Relevant Period until all such shares have been exhausted. Purchases and sales of Eligible Securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. Shares sold in excess of the number of shares purchased through open market transactions or acquired other than through private placement offerings during the Relevant Period will be deemed to be sales of restricted stock. The Sale Proceeds on such shares will be subtracted from the Purchase Amount in the calculation of Eligible Loss Amount.

COMPUTATION OF THE ELIGIBLE LOSS AMOUNT FOR EACH ELIGIBLE CLAIMANT

8. The Eligible Loss Amount will be calculated as specified in paragraph 2 above. If the Eligible Loss Amount calculates to a negative number, that Eligible Claimant's Eligible Loss Amount shall be \$0.00.

DISTRIBUTION PAYMENT CALCULATIONS

9. Each Eligible Claimant with an Eligible Loss Amount greater than zero shall be allocated a Distribution Payment, subject to the conditions in the paragraphs below.
10. Should the total Eligible Loss Amounts of all Eligible Claimants exceed the Net Distribution Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a pro rata distribution formula. The Distribution Agent shall determine each Eligible Claimant's pro rata share of the Net Distribution Fund based upon each Eligible Claimant's Eligible Loss Amount divided by the aggregate Eligible Loss Amounts of all Eligible Claimants.
11. An Eligible Claimant's Eligible Loss Amount will be reduced by the amount of any compensation for the loss that resulted from the conduct described in the Amended Complaint in this case that was received from another source (e.g., class action settlement), to the extent known by the Distribution Agent.

12. If an Eligible Claimant has a calculated Distribution Payment that is less than \$10.00 that Eligible Claimant will not be included in the calculation and, if the distribution proceeds according to a pro rata distribution formula, the funds will be distributed to other Eligible Claimants whose Distribution Payments are greater than this amount. In no event will an Eligible Claimant receive a Distribution Payment totaling more than his, her or its Eligible Loss Amount.