

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

A.C.L.N., LTD., et al.,

Defendants.

Civil Action No.
1:02-CV-7988 (LAP)

DISTRIBUTION PLAN FOR ACLN DISTRIBUTION FUND

This Distribution Plan sets forth the method and procedures for distributing the Fair Fund (“ACLN Fund”) established pursuant to the provisions of the Sarbanes-Oxley Act of 2002 and the Court Order dated June 24, 2003, in the above-captioned action. Pursuant to the Final Judgments entered against each of the ACLN defendants¹ and the Order for the Appointment of Distribution Agent entered by this Court on March 28, 2012, the monies paid in this action are to be distributed pursuant to the Plan developed by the Distribution Agent, Garden City Group.

¹ Final Judgment against Defendants BDO International, Minas Ioannou and Christakis Ioannou was entered on October 18, 2002; Final Judgment against Defendant Abderrazak “Aldo” Labiad was entered on September 16, 2004; Final Judgment against Relief Defendant Scandinavian Car Carriers A/S was entered on September 16, 2004; Final Judgment against ACLN was entered on September 16, 2004 and Final Judgment against Defendants Joseph J.H. Bisschops, Emerald Sea Marine, Inc., Pearlrose Holdings International, S.A., and Scott Investments, S.A. and Relief Defendants Sergui, Ltd., Pandora Shipping, S.A., DCC Limited, Maverick Commercial, Inc., and Westbound Development Corp., was entered on November 17, 2005. The Commission has recovered \$28,265,287.11 and more than \$94 million remains outstanding. The recovered funds have been deposited into the ACLN CRIS Accounts.

ARTICLE I

DEFINITIONS

As used in this Distribution Plan, the following definitions shall apply:

- 1.1. "ACLN" shall mean A.C.L.N., Ltd.
- 1.2. "ACLN Common Stock" shall mean shares of common stock issued by ACLN.
- 1.3. "ACLN CRIS Accounts" shall refer collectively to the funds deposited and to be deposited into two separate interest-bearing Court Registry Investment System ("CRIS") accounts, numbered 1:02-cv-07988-1 and 1:02-cv-07988-2, under the case name "SEC v. A.C.L.N Ltd., et al.," established pursuant to the Order of the Court dated June 24, 2003, and which are to be combined for purposes of distribution.
- 1.4. "ACLN Defendants" shall refer collectively to Defendants ACLN, Abderrazak "Aldo" Labiad, Joseph J.H. Bisschops, Alex de Ridder, BDO International (Cyprus), Minas Ioannou, Christakis Ioannou, Emerald Sea Marine, Inc., Pearlrose Holdings International, S.A., Scott Investments and Relief Defendants S.A., Scandinavian Car Carriers A/S, Sergui, Ltd., Pandora Shipping, S.A., DCC, Ltd., Maverick Commercial, Inc., and Westbound Development Corp.
- 1.5. "ACLN Distribution Fund" shall refer to the fund established pursuant to the provisions of the Sarbanes-Oxley Act of 2002 and pursuant to the Court Order dated June 24, 2003 and certain other orders of the Court, the corpus of which consists of the funds in the ACLN CRIS Accounts, together with any funds added to those accounts, plus interest, less costs, fees, tax payments, and reserves.

1.6. “ACLN Final Judgments” shall refer collectively to the Final Judgments entered against each of the ACLN Defendants by the Court, pursuant to which, among other things, the Court ordered the ACLN Defendants to disgorge more than \$122 million.²

1.7. “Affiliate” shall have the meaning set forth in section 101(2) of Title 11 of the United States Code, 11 U.S.C. § 101(2).

1.8. “Approved Claim” shall mean the final amount of an Eligible Claimant’s asserted claim that is ultimately approved for payment pursuant to this Distribution Plan.

1.9. “Claim Deficiency Notice” means the notice sent by the Distribution Agent to a Potentially Eligible Claimant whose claim is deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Potentially Eligible Claimant of the reason(s) for the deficiency and provide the opportunity to cure any such deficiencies. A Claim Deficiency Notice shall be provided no later than sixty (60) days after the Claims Bar Date.

1.10. “Claims Bar Date” shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be postmarked or received by the Distribution Agent to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the ACLN Distribution Fund. The Claims Bar

² A total of five Final Judgments were entered in the ACLN action. The Final Judgment against BDO International (Cyprus), Minas Ioannou and Christakis Ionnou, entered on October 18, 2002, ordered BDO International (Cyprus) to pay disgorgement and prejudgment interest of \$62,196.71, which was paid on October 31, 2002. The Final Judgment did not order Minas Ioannou or Christakis Ioannou to pay disgorgement or prejudgment interest. Three separate Final Judgments were entered on September 16, 2004 against Abderrazak “Aldo” Labiad, Scandinavian Car Carriers A/S (“Scandinavian Car Carriers”) and A.C.L.N., Ltd (“ACLN”). Each of these Defendants was ordered to pay disgorgement by paying the current balance in certain foreign bank accounts, including accrued interest, to the Court. No specific dollar amount was given in the Final Judgments except that the Final Judgment against Scandinavian Car Carriers capped its financial liability at \$25 million. On July 8, 2003, \$3,291,096.53 was paid to the Court on behalf of ACLN, and on May 18, 2005, \$24,911,993.87 was paid to the Court on behalf of Scandinavian Car Carriers. On November 17, 2005, Final Judgment was entered against the remaining Defendants, Joseph J.H. Bisschops, Alex de Ridder, Emerald Sea Marine, Inc., Pearlrose Holdings International, S.A., Scott Investments and Relief Defendants Sergui, Ltd., Pandora Shipping, S.A., DCC, Ltd., Maverick Commercial, Inc., and Westbound Development Corp. The Final Judgment states that the disgorgement paid collectively between these Defendants was not to exceed \$79,398,223.84 before prejudgment interest, or \$94,499,209.01 including prejudgment interest. As of January 2, 2013, none of the disgorgement or prejudgment interest required in the November 17, 2005 Final Judgment has been paid.

Date shall be one hundred and twenty (120) days after the Distribution Agent's initial mailing of Claims Packets to Potentially Eligible Claimants, as set forth in Section 3.18 below. Claims postmarked or received after the Claims Bar Date will *not* be reviewed and evaluated.

1.11. "Claims Determination Date" shall mean the date on or before which the Distribution Agent is to reach its determination concerning the validity and amount of each Potentially Eligible Claimant's claim. Except as otherwise provided herein, the Claims Determination Date shall be no later than one hundred and fifty (150) days following the Claims Bar Date.

1.12. "Claims Packet" shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Distribution Agent and to those people who request such materials. The Distribution Agent, in consultation with the staff of the Commission, shall prepare the Claims Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and a Proof of Claim Form. Claims Packets will be sent to all Potentially Eligible Claimants and Eligible Claimants *including* Class Action Authorized Claimants whose claims have been previously authorized with respect to those ACLN Common Stock transactions from June 29, 2000 through March 18, 2002 in the Class Action.

1.13. "Class Action" shall mean that certain class action litigation, styled *Teachers' Retirement System of Louisiana v. A.C.L.N., Ltd., et al.*, Master File No. 1:01-CV-11814-LAP, filed in the United States District Court for the Southern District of New York. The Court in that litigation approved a Partial Settlement for \$5.5 million with ACLN and certain individuals, a Partial Settlement for \$6.75 million with defendant BDO International B.V. and BDO International Accountants & Consultants (CYPRUS), and a Partial Settlement for \$3.25 million with defendant BDO Seidman, LLP. The net proceeds of each of these Partial Settlements were distributed on a *pro rata* basis to authorized claimants who purchased or otherwise acquired the common stock of ACLN, directly or beneficially, between June 29, 2000 and March 18, 2002,

inclusive. The Garden City Group, Inc., the Distribution Agent for this Distribution Plan, also served as the claims administrator of the Class Action settlement fund.

1.14. "Class Action Authorized Claimant" shall mean a Person who submitted a claim in the Class Action and whose claim was authorized in whole or in part by the Claims Administrator for payment in the Class Action. A Class Action Authorized Claimant is deemed an Eligible Claimant under this Distribution Plan only with respect to those ACLN Common Stock transactions from June 29, 2000 through March 18, 2002 which were previously authorized in the Class Action. A Class Action Authorized Claimant is not automatically deemed an Eligible Claimant in this Distribution Plan with respect to ACLN Common Stock transactions for which a claim was denied in whole or in part by the claims administrator in the Class Action for any reason or for which no claim was submitted to the claims administrator in the Class Action. In addition, a Person who submitted a claim in the Class Action and whose claim was authorized in whole or in part by the Claims Administrator for payment in the Class Action, but who now wishes to modify their claim or extend their claim in accordance with the expanded SEC Action Claims Period of June 15, 1999 through March 18, 2002, is not *automatically* deemed an Eligible Claimant under this Distribution Plan. All modified or expanded claims will be evaluated in accordance with Section 3.1

1.15. "Complaint" shall mean the Complaint filed by the Commission against the ACLN Defendants. *See* Dkt. No. [1].

1.16. "Commission" shall mean the United States Securities and Exchange Commission.

1.17. "Days" shall mean business days.

1.18. "Determination Notice" shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant who files a new claim or to a Class Action Authorized Claimant who modifies a previously filed claim which states the Distribution Agent's determination of the

validity of the claim. The Distribution Agent will not send Determination Notices to Class Action Authorized Claimants who do not modify their previously authorized claim; they are automatically eligible for a distribution from the ACLN Distribution Fund..

1.19. "Distribution Agent" shall mean The Garden City Group, Inc., the Distribution Agent recommended by the Commission to assist with the administration and distribution of the ACLN Distribution Fund.

1.20. "Distribution Plan" shall mean this distribution plan, as approved by the Court.

1.21. "Distribution Plan Notice" shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the ACLN Distribution Fund and the obligation, for all Potentially Eligible Claimants *except* Class Action Authorized Claimants, to file a Proof of Claim Form in order to participate. The Distribution Agent, in consultation with the staff of the Commission, shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan, and such notice shall include, at a minimum, a statement that the ACLN Distribution Fund relates to purchases of ACLN Common Stock during the SEC Action Claims Period, the means of obtaining Claim Packets, instructions for submitting Proofs of Claim, including instructions for updating those claims authorized by the Claims Administrator in the Class Action via the Distribution Agent's online claims filing system, and the Claims Bar Date. The Distribution Plan Notice shall advise Potentially Eligible Claimants that by participating in the distribution of the ACLN Distribution Fund, they will not be releasing any rights or claims they may have against any party, including, but not limited to, ACLN or ACLN's past and present directors, officers, advisers, and agents (other than with respect to the Distribution Agent). Furthermore, the Distribution Plan Notice shall advise all Potentially Eligible Claimants that Class Action Authorized Claimants are automatically deemed Eligible Claimants with respect only to those ACLN Common Stock transactions for which a claim was

previously authorized in the Class Action from June 29, 2000 through March 18, 2002. Class Action Authorized Claimants who do not wish to modify their claims are not required to submit a written claim and need not do anything further to have their claim considered, except to the extent that such Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary and required to comply with the certification requirement set forth in Section 3.9 below. For Class Action Authorized Claimants that did engage in additional ACLN Common Stock transactions during the SEC Action Claims Period from June 15, 1999 through March 18, 2002, which claims were not previously authorized in the Class Action, or who do wish to modify their previous claims, such Class Action Authorized Claimants must submit a written claim with respect to those new or modified transactions only.

1.22. "Eligible Claimant" shall mean a Potentially Eligible Claimant filing a Proof of Claim with the Distribution Agent on or before the Claims Bar Date who is finally determined by the Distribution Agent to be eligible for a distribution from the ACLN Distribution Fund as provided herein because he or she purchased ACLN Common Stock during the SEC Action Claims Period and suffered a loss as defined herein. An Eligible Claimant shall also mean a Class Action Authorized Claimant. An Eligible Claimant shall not include:

(a) Any director or officer, or former director or officer, of ACLN or any of its past or present Affiliates who served in such capacity during the SEC Action Claims Period (or any of his or her assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities);

(b) Any employee of ACLN or of any of its past or present Affiliates who has been terminated for cause in connection with the violations alleged in the Commission's Complaint in this action or any related Commission action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Commission's Complaint in this action or any

related Commission action (or any of such employee's Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities);

(c) Any defendant in any action brought by the Commission or any class action lawsuit related to the conduct described in the Commission's Complaint in this action or any related Commission action (or any of such defendant's Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities), unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant's timely filed Proof of Claim Form;

(d) Any Person who, as of the Claims Bar Date, has been the subject of criminal charges related to the violations alleged in the Commission's Complaint in this action or any related Commission action (or any of his or her Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities);

(e) Any Person who assigned their right to obtain a recovery in the Commission's action against ACLN;

(f) Any assignee of another Person's right to obtain a recovery in the Commission's action against ACLN, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by inheritance or devise; or

(g) The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent, and those persons and their employees who are engaged to perform services pursuant to this Plan.

1.23. "Eligible Loss Amount" shall mean the amount of loss an Eligible Claimant has incurred through the purchase of ACLN Common Stock during the SEC Action Claims Period, as determined under the Plan of Allocation (attached hereto as Exhibit A).

1.24. "Minimum Distribution Amount" shall mean for purposes of this Distribution Plan, after pro-rated payments are calculated, a distribution to be made to an Eligible Claimant must equal or exceed \$25.00.

1.25. "Person" shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company, or governmental entity. All nouns, pronouns, and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the context may require.

1.26. "Plan of Allocation," for purposes of this Distribution Plan, shall be the methodology set forth in Attachment A and attached hereto.

1.27. "Potentially Eligible Claimant" shall mean a Class Action Authorized Claimant or a Person identified by the Distribution Agent as having a possible claim to the ACLN Distribution Fund under this Distribution Plan, or a Person asserting that he or she has a possible claim to the ACLN Distribution Fund under this Distribution Plan.

1.28. "Proof of Claim Form" shall mean the form designed by the Distribution Agent in accordance with this Distribution Plan for the filing of proof of a Potentially Eligible Claimant's claim. The form shall require, at a minimum, that a Potentially Eligible Claimant submit sufficient documentation reflecting the Potentially Eligible Claimant's purchases and dispositions of ACLN Common Stock during the SEC Action Claims Period and the Tax Identification Number of the Potentially Eligible Claimant. Class Action Authorized Claimants are automatically deemed Eligible Claimants with respect only to those ACLN Common Stock transactions for which a claim was previously authorized in the Class Action from June 29, 2000 through March 18, 2002. Class Action Authorized Claimants who do not wish to modify their claims are not required to submit a Proof of Claim Form and need not do anything further to have their claim considered, except to the extent that such Class Action Authorized Claimant is a

pooled investment fund or entity with more than one underlying beneficiary and required to comply with the certification requirement set forth in Section 3.9 below. For Class Action Authorized Claimants that did engage in additional ACLN Common Stock transactions during the SEC Action Claims Period from June 15, 1999 through March 18, 2002, which claims were not previously authorized in the Class Action, or who wish to modify their previous claims, such Class Action Authorized Claimants must submit a Proof of Claim Form with respect to those new or modified transactions only.

1.29. "Recognized Loss (or Gain) Per Share" shall mean the amount of loss or gain per share, as calculated pursuant to the Plan of Allocation.

1.30. "SEC Action Claims Period," for purposes of this Distribution Plan, shall mean the period of time commencing June 15, 1999 and continuing through the close of trading on March 18, 2002. The SEC Action Claims Period is one year longer than the Class Action Claims Period of June 29, 2000 through March 18, 2002.

1.31. "Summary Notice" shall mean the notice to be published in a national publication pursuant to Section 3.15 below. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement that the ACLN Distribution Fund relates to purchases of ACLN Common Stock during the SEC Action Claims Period and the means of obtaining a Claims Packet.

1.32. "Tax Administrator" shall mean Damasco & Associates, LLP, the firm appointed by the Court on November 17, 2011.

ARTICLE II

ALLOCATION AMONG ELIGIBLE CLAIMANTS

2.1 The ACLN Distribution Fund shall be allocated among Eligible Claimants who filed Approved Claims, as provided under the terms of this Distribution Plan.

2.2 An Eligible Claimant's Eligible Loss Amount shall be used as the basis for calculating, pursuant to the Plan of Allocation, the amount of the Approved Claim. As described in the Plan of Allocation generally, the Eligible Loss Amount is determined by aggregating the Recognized Loss (or Gain) Per Share of all shares purchased during the SEC Action Claims Period. As set forth in Section 3.5 below, the Distribution Agent may, but is not required to, aggregate an Eligible Claimant's accounts for purposes of determining the Eligible Loss Amount.

ARTICLE III

ADMINISTRATION OF THE CLAIMS PROCEDURE

A. General Administrative Provisions

3.1 The Distribution Agent shall oversee the administration of the claims, procedures, and distribution as provided in this Distribution Plan. The Distribution Agent shall review the claim of each Potentially Eligible Claimant and make a determination under the criteria established herein as to the eligibility of each Potentially Eligible Claimant to recover monies and the amount of money to be distributed from the ACLN Distribution Fund to each Eligible Claimant in accordance with the provisions of this Distribution Plan.

3.2 Any claim asserted by a Potentially Eligible Claimant (except as provided in Section 3.4 below) shall be in writing² and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence which the Distribution Agent deems necessary or appropriate, including, but not limited to, available account statements and trade confirmations.

3.3 All claims (except as provided in Section 3.4 below) must be verified on the basis of a sworn Proof of Claim Form, affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States.

² Claims with 100 or more transactions or on behalf of 20 or more different accounts must be submitted electronically and in the format specified by the Distribution Agent. The mandatory electronic filing requirements will be available on the ACLN Distribution Fund website. Files that do not comply with the required electronic filing format may be rejected.

3.4 A Class Action Authorized Claimant is not required to submit the written claim described in Section 3.2 or the verification described in Section 3.3 with respect only to those ACLN Common Stock transactions from June 29, 2000 through March 18, 2002 which were previously authorized by the Claims Administrator in the Class Action. A Class Action Authorized Claimant who makes a claim regarding ACLN Common Stock transactions for which a claim was denied in whole or in part by the claims administrator in the Class Action for any reason, or for which no claim was submitted to the claims administrator in the Class Action, is required to comply with the requirements set forth in Sections 3.2 and 3.3 with respect to such claim. In addition, any Class Action Authorized Claimant who wishes to modify or extend their claim in accordance with the expanded SEC Action Claims Period of June 15, 1999 through March 18, 2002, is required to comply with the requirements set forth in Sections 3.2 and 3.3 with respect to such claim. Finally, if a Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary, a custodian, trustee, or professional investing on behalf of such fund or entity is required to comply with the certification requirement set forth in Section 3.9 below with respect to all claims on behalf of the fund or entity, including those relating to transactions for which a claim was previously authorized in the Class Action.

3.5 In determining the Eligible Loss Amount for an Eligible Claimant, the Distribution Agent may aggregate the accounts held by an Eligible Claimant in accordance with the following aggregation rules:

(a) Each Person who is a Potentially Eligible Claimant and would like to aggregate accounts shall so designate in the Proof of Claim Form, *provided* that a Person may only aggregate accounts as follows:

(i) with respect to an individual Person, such Person may aggregate such Person's account, such Person's parent's, child's, or spouse's (collectively "family") accounts,

such Person's or such Person's family retirement accounts, and accounts owned by a corporation or partnership in which such Person or such Person's family is a majority owner or which is controlled by such Person or such Person's family; and

(ii) with respect to a Person that is a corporation or partnership, such Person's accounts and such Person's Affiliates' accounts.

(b) The Distribution Agent in its exclusive discretion may, for purposes of this Section 3.5, but shall not have any obligation to, aggregate accounts not designated for aggregation in a Proof of Claim Form.

(c) Notwithstanding the aggregation of individual accounts with retirement accounts (e.g. IRA accounts) for purposes of this Section 3.5, all payments shall respect the manner in which an account is nominated. For example, Jane Smith may aggregate her personal accounts with her IRA account to meet the Minimum Distribution Amount. However, the payment to Jane Smith will be made payable directly to her for her personal account(s) and payable to the trustee or custodian of her IRA for her IRA account.

3.6 The receipt of ACLN Common Stock during the SEC Action Claims Period by gift, inheritance, devise, or operation of law shall not be deemed to be a purchase of ACLN Common Stock during the SEC Action Claims Period, nor shall it be deemed an assignment of any claim relating to the purchase of such shares unless specifically provided in the instrument of gift or assignment. However, the recipient of ACLN Common Stock as a gift or as a distribution from an estate shall be eligible to file a Proof of Claim Form and participate in the distribution of the ACLN Distribution Fund to the extent the particular donor or decedent as the actual purchaser of ACLN Common Stock would have been eligible based upon the circumstance of such purchase within the SEC Action Claims Period. However, the donee and the donor may not both make a

claim with regard to the same ACLN Common Stock. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

3.7 To the extent that an Eligible Claimant, his or her representative, heir, or assign requests a distribution check to be issued or reissued in a different name than the Eligible Claimant (*e.g.*, as the result of a name change because of marriage or divorce, or as the result of death), the Distribution Agent shall honor such request upon receipt of documentation which the Distribution Agent in its sole discretion deems appropriate to substantiate the request.

3.8 Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which does not include Individual Retirement Accounts, and such plan's participants are properly made by the custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of plan participants and the number of shares owned by each plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner that is consistent with its fiduciary duties and the account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potentially Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such retirement plans if the information required for such a distribution is known to or provided to the Distribution Agent prior to the Claims Bar Date.

3.9 Custodians, trustees, or professionals who are investing on behalf of more than one Potentially Eligible Claimant in a pooled investment fund or entity will be required to complete a certification, which will require them at a minimum to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial

owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management, even if the pooled investment fund or entity is a Class Action Authorized Claimant (as defined in Sections 1.14 and 3.4 above). The certification form will be available upon request from the Distribution Agent.

3.10 To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make adjustments or clarifications to the Distribution Plan that are consistent with the purposes of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission and approved by the Court. Non-material changes to the Distribution Plan may be implemented by the Distribution Agent after consultation with, and consent of, Commission staff.

3.11 The Distribution Agent will build a database for purposes of administering the ACLN Distribution Fund, containing previously approved information regarding all Class Action Authorized Claimants as well as information received from Potentially Eligible Claimants in the Commission's action. If a previously approved claim is amended by a Class Action Authorized Claimant, the Distribution Agent will update the ACLN Distribution Fund database to reflect the Class Action Authorized Claimant's modified claim.

3.12 The ACLN Distribution Fund will be distributed to investors who purchased ACLN Common Stock during the SEC Action Claims Period, from June 15, 1999 through March 18, 2002, which is one year longer than the time period covered in the court-approved plan in the Class Action. The Class Action period ran from June 29, 2000 through March 18, 2002.

B. Identification of and Notice to Potentially Eligible Claimants

3.13 The Distribution Agent shall, insofar as is practicable, use its best efforts to identify Potentially Eligible Claimants from a review of trading records and any other commercially reasonable sources available to it, including the database maintained in the Class Action.

3.14 In order to ensure a timely and accurate mailing of Claims Packets to Potentially Eligible Claimants, the transfer agent for ACLN, to the extent possible, shall deliver to the Distribution Agent the transfer files in its possession, custody, or control (i.e., all record holders of ACLN Common Stock on the first and last day of the SEC Action Claims Period, plus all record transferees during the period) no later than five (5) business days from the date of the entry of the order by the Court approving this Distribution Plan.

3.15 Within forty-five (45) days following the entry by the Court of its order approving this Distribution Plan, the Distribution Agent shall:

(a) create a mailing and claims database, consisting of new records provided by ACLN or its agent as well as the existing information of the Class Action Authorized Claimants;

(b) run a National Change of Address search to retrieve updated addresses for all records in the new database, so that the Distribution Agent has updated mailing information, to the extent possible, for Potentially Eligible Claimants;

(c) mail by United States First Class Mail a Claims Packet to each Potentially Eligible Claimant known to the Distribution Agent;

(d) include in the Claims Packet sent to each Class Action Authorized Claimant a cover letter stating that such Class Action Authorized Claimant is automatically deemed an Eligible Claimant with respect only to those ACLN Common Stock transactions for which a claim was previously authorized in the Class Action. The cover letter will also provide such claimants with a website link and a personalized identification number for the claimant to view the transactions that the Distribution Agent has on file for such claimant from the Class Action. Furthermore, the cover letter will notify each Class Action Authorized Claimant that if their only ACLN Common Stock transactions consist of those transactions for which their claim was previously authorized for payment in the Class Action, they are not required to submit a written

claim and need not do anything further to have their claim considered, except to the extent that such Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary and required to comply with the certification requirement set forth in Section 3.9 above. The letter also will notify each Class Action Authorized Claimant that if they did engage in additional ACLN Common Stock transactions during the SEC Action Claims Period for which their claim was not previously authorized in the Class Action, and would like to make a claim regarding such transactions, the claimant must submit a written claim with respect to those transactions only, and comply with the certification requirement set forth in Section 3.9 to the extent applicable;

(e) establish a website constructed for the administration of the ACLN Distribution Fund from which each Potentially Eligible Claimant may request a Claims Packet by mail or download a copy of the Claims Packet and other relevant documents online. In addition, Class Action Authorized Claimants shall have the ability to view their approved transactions from the Class Action on the website and have the ability to supplement their claim through an online filing system. The Distribution Agent will also establish a link to such a website from its own website, www.gcginc.com/cases;

(f) provide a copy of the Distribution Plan and Distribution Plan Notice to the Commission and request that the Commission establish a link to the ACLN Distribution Fund's website from <http://www.sec.gov>;

(g) establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information about the ACLN Distribution Fund; and

(h) publish a copy of a Summary Notice, approved by the Commission, on a single occasion in the Investor's Business Daily (as well as a release on the P.R. Newswire) within two weeks of the date of the mailing of Claims Packets to Potentially Eligible Claimants.

3.16 The Distribution Agent shall also give additional notice of the distribution process in such a manner as the Distribution Agent, in consultation with the Commission staff, deems appropriate, which may include direct notification to custodians, securities broker-dealers, and other potential nominee purchasers identified by the Distribution Agent. The Distribution Agent may limit such notice to the sub-period of the SEC Action Claims Period from trade dates June 15, 1999 through June 28, 2000, which preceded the Class Action class period.

3.17 The Distribution Agent shall promptly provide a Claims Packet to any Potentially Eligible Claimant who so requests electronically, in writing, or by telephone, as set forth in the Distribution Plan Notice.

3.18 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant (except for a Class Action Authorized Claimant with respect to those ACLN Common Stock transactions for which a claim was previously authorized in the Class Action as set forth in Section 1.14 above) must submit to the Distribution Agent a properly completed Proof of Claim reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Claims Bar Date may be extended for one or more Potentially Eligible Claimants by the Distribution Agent in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Unless otherwise determined by the Distribution Agent in its sole discretion for good cause shown, any Potentially Eligible Claimant who does not file a properly completed and documented Proof of Claim, if so required, including the Potentially Eligible Claimant's Tax Identification Number, so that such completed form and documentation are postmarked by (or received by the Distribution Agent if not sent by U.S. Mail) on or before the Claims Bar Date (*see* Section 1.10 above), shall be barred from asserting a claim against the ACLN Distribution Fund or the Distribution Agent. The

burden shall be upon the Potentially Eligible Claimant to ensure that his or her Proof of Claim has been properly and timely received by the Distribution Agent.

3.19 Each Potentially Eligible Claimant (except for a Class Action Authorized Claimant not required to submit a written claim) will be provided with a notification in the Claims Packet stating that a claim will not be deemed submitted unless the Potentially Eligible Claimant receives an "Acknowledgement Postcard" or an electronic acknowledgement from the Distribution Agent. The Acknowledgement Postcard or the electronic acknowledgement shall be the official acknowledgement that the Distribution Agent has received and will review the claim.

**C. Notification of Claims Determination,
Including Notice of Deficient Claims and Opportunity to Cure**

3.20 The Distribution Agent shall review each Proof of Claim Form received to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of his or her claim, and that he or she qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

3.21 The Distribution Agent shall provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, a Claim Deficiency Notice setting forth the reason(s) why the claim is deficient. The Claim Deficiency Notice shall be provided to such affected claimants within sixty (60) days after the Claims Bar Date.

3.22 The Distribution Agent shall have the authority, in its sole discretion, on a case-by-case basis, to extend the Claims Bar Date and waive technical claim deficiencies and approve claims.

3.23 Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Notice.

3.24 A Potentially Eligible Claimant who has failed to file an appropriate Proof of Claim in a timely manner, or who has failed to cure a deficiency identified in a Claim Deficiency Notice, is not permitted to object to the barring or denial of his or her claim on the basis that the Distribution Agent failed to mail, or properly to mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Distribution Plan Notice, Claims Packet, or the relevant Determination Notice, or that an initial Proof of Claim, or revised Proof of Claim to cure deficiencies, or the requisite supporting documentation, was improperly reflected as not having been received by, or properly recorded as received by, the Distribution Agent, or that a Potentially Eligible Claimant's name and/or proper contact information was not properly recorded in the Distribution Agent's records. The Potentially Eligible Claimant has the burden of notifying the Distribution Agent of his or her current address and other contact information, and confirming receipt of that information by the Distribution Agent.

3.25 On or before the Claims Determination Date, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a new or modified Proof of Claim with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim. In the event a claim is denied, in whole or in part, the Distribution Agent will state the reason for such denial. The Distribution Agent will not send Determination Notices to Class Action Authorized Claimants, unless they modify their previously authorized claims. Class Action Authorized Claimants are automatically deemed Eligible Claimants with respect only to those ACLN Common Stock transactions for which a claim was previously authorized in the Class Action. Class Action Authorized Claimants who

do not wish to modify their claims are not required to submit Proof of Claim Forms, and will therefore not be receiving Determination Notices.

3.26 All determinations made by the Distribution Agent in accordance with this Distribution Plan shall be final and not subject to appeal.

D. Payment of Approved Claims

3.27 The Distribution Agent shall distribute the ACLN Distribution Fund to all Eligible Claimants who filed Approved Claims only after all timely submitted Proofs of Claim have been processed and all potentially Eligible Claimants whose claims have been rejected or disallowed, whether in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above and provided that the distribution amount to be made to an Eligible Claimant must equal or exceed the Minimum Distribution Amount.

3.28 In order to maintain a high-level of quality control, an independent outside firm or party that is acceptable to the Commission staff shall be retained by the Distribution Agent, if requested by the Commission during the administration of this Distribution Plan, to perform an independent review of agreed upon procedures designed to ensure that new claims or changes to a claim filed by a Class Action Authorized Claimant have been accurately processed, calculated, and validated based upon a statistically designed random sample. Upon completion of the independent review, the independent firm or party shall provide a report of its findings to the Commission staff in the manner prescribed by the Commission staff. Based upon the results of the review, the Distribution Agent shall correct any individual errors identified and undertake additional procedures to correct any errors that may have occurred during claims processing, and consult on any such corrections or additional procedures with the Commission staff.

3.29 Within forty-five (45) days following the Claims Determination Date, the Distribution Agent shall prepare a list of Eligible Claimants, the amount of the asserted claim of each Eligible

Claimant, and the Approved Claim of each Eligible Claimant (i.e., the Final Payee List). The Distribution Agent shall provide the Final Payee List to the Commission staff with a reasonable assurance letter as to the completeness and accuracy of the payment file. The Final Payee List shall, upon request, be made available to the Court. The distribution amount specified to the Court will have already taken into account reserves for taxes, as requested by the Tax Administrator and approved by the Commission staff, and reserves necessary for: (i) other fees that may be incurred in handling claims that require further review, late claims, other claims at the Distribution Agent's discretion; or (ii) reasonably anticipated expenses.

3.30 To facilitate distribution, the Distribution amount shall be transferred from the ACLN CRIS Accounts to the custody of the Distribution Agent as described below:

(a) Upon receipt of the monies from the ACLN CRIS Accounts, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account maintained at a well-capitalized³ United States commercial bank (the "Bank"), to be proposed by the Distribution Agent and not unacceptable to the staff of the Commission. The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies. In the event the Bank's "well-capitalized" status changes, the Distribution Agent will promptly inform the SEC staff of such change in status.

(b) Pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, the Distribution Agent and the Bank shall establish an escrow account in the name of and bearing the Employer Identification Number ("EIN") of the Qualified Settlement Fund, as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: "SEC V A.C.L.N. Distribution Fund," as custodian for

³ "Well-capitalized" bank means a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. 208.43.

the benefit of investors allocated a distribution from the Distribution Plan in SEC v. A.C.L.N., Ltd., *et al.* (the “ACLN Distribution Fund Escrow Account”). The Distribution Agent and Bank shall also establish a separate deposit account (*e.g.* controlled distribution account, managed distribution account, linked checking and investment account) titled as set forth above for the purpose of funding checks to be distributed to investors by the Distribution Agent pursuant to the Distribution Plan.

(c) During the term of the Escrow Agreement, if invested, the ACLN Distribution Fund Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, tax obligations, and/or fees of the Tax Administrator, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or 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 any investment by an AAA-rated Money Market Mutual Fund in short term U.S. Treasury securities will not be made through repurchase agreements and/or other derivative products. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

d. In consultation with the staff of the Commission, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the escrow and the deposit accounts that will preserve earnings, if possible, without compromising safety

and soundness by providing maximum protection for the Distribution Fund under the full faith and credit of the United States Government and/or the maximum available FDIC deposit insurance and pass-through deposit insurance.

3.31 If, after the Distribution Agent makes the distribution to Eligible Claimants, funds remain in the ACLN Distribution Fund after payment of all outstanding taxes and fees, those funds shall be paid to the Commission for transfer to the United States Treasury.

3.32 All ACLN Distribution Fund checks presented for payment or electronic transfers will be subject to "positive pay" controls before being honored by the Bank, and all such checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days.

Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the ACLN Distribution Fund. If the Eligible Claimant submits a valid, written request for reissue during the 90 days following the issuance of the check, such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after ninety (90) days post-distribution.

3.33 The Distribution Agent shall use all reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service. However, the claimant has the burden of providing the Distribution Agent with any changes to his or her mailing address.

3.34 All distribution payments shall be preceded or accompanied by a communication that includes, as appropriate:

- (a) a statement characterizing the distribution;

- (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- (c) a statement that checks will be void after ninety (90) days; and
- (d) the name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The ACLN Distribution Fund distribution checks, on their face, or the accompanying mailing shall clearly indicate that the money is being distributed from an ACLN Distribution Fund established by the Commission to compensate investors for harm as a result of their investment in ACLN Common Stock.

3.35 Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person if it makes a distribution in accordance with the list of all Eligible Claimants and their Approved Claims as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the ACLN Distribution Fund, such Eligible Claimant shall 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 ACLN Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

3.36 The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent), including, but not limited to, ACLN and ACLN's past or present directors, officers, employees, advisers, and agents.

ARTICLE IV

POST-DISTRIBUTION

4.1. The Distribution Agent shall reissue checks to Eligible Claimants, upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after ninety (90) days post-distribution.

4.2. The Distribution Agent will perform advanced address searches for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within ninety (90) days post-distribution.

4.3. One hundred and twenty (120) days following the distribution, all approved final fees and expenses shall be paid, all outstanding checks shall be voided, and any remaining funds shall be paid to the Commission for transfer to the United States Treasury upon receipt of written instructions by the Distribution Agent.

ARTICLE V

WRAP-UP AND WIND DOWN OF DISTRIBUTION

5.1 The Distribution Agent will destroy all documents, including documents in any media, six (6) years after the transfer of any remaining funds to the Commission. In addition, the Distribution Agent will shut down the toll-free number and website established specifically for the administration of the ACLN Distribution Fund upon the transfer of any remaining funds to the Commission.

5.2 Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever and, in order to allow the full and final distribution of the ACLN Distribution Fund, no further claims shall be made against the ACLN Distribution Fund beyond the amount allocated to Eligible Claimants. Accordingly, this Plan of Distribution, as approved by the

Court, bars any further claims against the ACLN Distribution Fund beyond the amount allocated to Eligible Claimants.

5.3 Upon final distribution of the funds, the Distribution Agent shall make arrangement for the final payment of taxes and tax-related fees and shall submit a final accounting to the Court in an SEC standard accounting format provided by the staff of the Commission. The ACLN Distribution Fund shall be eligible for termination, and the Distribution Agent eligible for discharge, after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees have been paid; and (3) all remaining funds or any residual have been paid to the Commission for transfer to the United States Treasury.

ARTICLE VI

RESPONSIBILITIES OF THE TAX ADMINISTRATOR

6.1 The ACLN Distribution Fund is a Qualified Settlement Fund within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) obtaining a taxpayer identification number;
- (b) timely requesting funds necessary for the timely payment of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) fulfilling any information reporting or withholding requirements required for distributions from the ACLN Distribution Fund.

6.2 The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

ARTICLE VII

PAYMENT OF COSTS, FEES, AND TAXES, AND FILING OF REPORTS AND ACCOUNTINGS

7.1 Pursuant to the Order for Appointment of Distribution Agent (Dkt. No. 49), filed in the above-captioned case, the Distribution Agent's reasonable fees and costs associated with distributing the ACLN Distribution Fund, which were previously negotiated between the Distribution Agent and the staff of the Commission, shall be paid out of the ACLN Distribution Fund upon approval by SEC staff. Similarly, all taxes and reasonable Tax Administrator fees shall be paid out of the ACLN Distribution Fund upon approval by SEC staff.

7.2 The Distribution Agent shall provide to Commission staff and file with the Court a progress report and a quarterly account statement in a format to be provided by the Commission staff, within forty-five (45) days of the entry of this Distribution Plan, and shall provide to Commission staff and file additional reports and quarterly account statements within twenty (20) days after the end of every calendar quarter thereafter. The Distribution Agent shall also provide to Commission staff and file a final report and final account statement in a format to be provided by Commission staff, when its duties are completed. Such progress reports shall inform the Court and the staff of the Commission of the activities and status of the ACLN Distribution Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the ACLN Distribution Fund, including, among other things, an interim accounting of all monies in the ACLN Distribution Fund as of the most recent month-end, including all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, the value of those accounts, all monies earned or received into these accounts, funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the ACLN Distribution Fund to satisfy any fees, costs, taxes, and other expenses incurred in the implementation of this Distribution Plan. The final report shall

include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan. The Clerk of the Court shall provide the Distribution Agent with any account information relating to funds held in the ACLN CRIS Account under the case name designation *SEC v. A.C.L.N., Ltd., et al.*, Civil Action No. 1:02-CV-7988, that may be required for the quarterly and final reports, including providing copies of any account statements that the Distribution Agent may request.

ARTICLE VIII

OTHER RIGHTS AND POWERS

8.1 The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by it in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

8.2 The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the ACLN Distribution Fund, provided that 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.

8.3 All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

8.4 The Court reserves the right to amend this Distribution Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Distribution Plan.

SO ORDERED:

Dated: _____

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

Plan of Allocation

The proposed Plan of Allocation provides for distribution of the ACLN Distribution Fund to Eligible Claimants as follows:

Each Person claiming to be a Potentially Eligible Claimant shall be required to submit a separate Proof of Claim Form supported by such documents as specified in the Proof of Claim form, as are reasonably available to the Potentially Eligible Claimant.

All Proof of Claim Forms must be postmarked or received by _____, 2013, addressed as follows:

SEC v. A.C.L.N. Ltd.
c/o The Garden City Group, Inc.
PO Box 9882
Dublin, OH 43017-5782

To share in the ACLN Distribution Fund, each Potentially Eligible Claimant must submit a valid Proof of Claim Form. The exception to this requirement applies to a specific group of Eligible Claimants who were Class Action Authorized Claimants in the Class Action (Case Caption 1:02-CV-11814 (LAP)). Each Class Action Authorized Claimant is deemed to be an Eligible Claimant under this Distribution Plan with respect to those ACLN Common Stock transactions during the SEC Action Claims Period for which a claim was previously authorized in the Class Action. For those claims, no additional Proof of Claim Form needs to be provided. If the Class Action claim was denied in whole or in part by the claims administrator in the Class Action for any reason, the Class Action Authorized Claimant is not automatically deemed an Eligible Claimant and must provide a Proof of Claim Form in order to be potentially included in the ACLN Distribution Fund. In addition, to the extent a Potentially Eligible Claimant or Class Action Authorized Claimant would like to make a claim for transactions that were not previously covered by the Class Action but now fall within the SEC Action Claims Period, the claimant must now submit a written claim with respect to those transactions only.

With the exception of the Class Action Authorized Claimants mentioned above, unless otherwise ordered by the Court, any Eligible Claimant who fails to submit a Proof of Claim Form postmarked no later than ___, 2013 shall be forever barred from receiving payments from the ACLN Distribution Fund, pursuant to this Plan of Distribution.

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

To the extent there are sufficient funds in the ACLN Distribution Fund, each Eligible Claimant will receive an amount equal to the Eligible Claimant's claim, as defined below. If, however, the amount in the ACLN Distribution Fund is not sufficient to permit payment of the total claim of each Eligible Claimant, then each Eligible Claimant shall be paid the percentage of the ACLN Distribution Fund that each Eligible Claimant's claim bears to the total of the claims of all Eligible Claimants. Payment in this manner shall be deemed conclusive against all Eligible Claimants.

The Distribution Agent shall determine each Eligible Claimant's *pro rata* share of the ACLN Distribution Fund, as described above, based upon each Eligible Claimant's Eligible Loss Amount. The Eligible Loss Amount formula is not intended to be an estimate of the amount that an Eligible Claimant might have been able to recover after a trial; nor is it an estimate of the amount that will be paid to Eligible Claimants pursuant to the A.C.L.N. Limited Securities Litigation. The Eligible Loss Amount formula is the basis upon which the ACLN Distribution Fund will be proportionately allocated to Eligible Claimants.

Eligible Loss Amounts are based on the level of artificial inflation in the price of ACLN common stock, as determined by the Commission's damages expert. Eligible Loss Amounts are based on the price declines associated with the corrective disclosures of previously allegedly misrepresented information set forth in the Complaint. For certain periods, the Eligible Loss Amount is \$0. No loss amount is recognized when both the purchase and sale occur without intervening public disclosure of adverse information.

More specifically, the Commission's damages expert calculated the reasonable percentage of artificial inflation in the daily closing market price for ACLN common stock for each day in the SEC Action Claims Period that, in his opinion, was attributable to the alleged wrongdoing. [See Exhibit B, Declaration of Frank Torchio]. The Commission's expert analyzed the market price reaction to public disclosures that revealed or described the alleged misrepresentations or their effects. Further, the Commission's expert measured the percentage price decline associated with each particular disclosure, adjusted that price reaction to eliminate the effects, if any, attributable to general market or industry conditions, and then used standard statistical techniques to ensure that the price reaction was statistically significant (*i.e.*, greater than the normal variation in the price). The Commission's expert, thus, isolated the price effect that he reasonably believed was caused by the fraud. In addition, the Commission's damages expert also analyzed the market price reaction to defendants' announcements throughout the SEC Action Claims Period to determine if any were associated with statistically significant stock price increases. The Commission's expert, thus, isolated the price effect that he reasonably believed was caused by inflationary statements that increased the artificial inflation present in the price of the Company's stock.

Based on the isolated market reaction attributable to each inflationary statement and public disclosure of the alleged fraud, the Commission's damages expert determined, in his expert opinion, the reasonable percentage of artificial inflation in the market price of ACLN common stock. The percentage of artificial inflation in the closing market price for each day was then applied to the closing market prices for each day during the SEC Action Claims Period to calculate the dollar artificial inflation on each day during the SEC Action Claims Period (the "Inflation Amount"). [See Exhibit B, Declaration of Frank Torchio, and accompanying Exhibit 4 to the Declaration].

An Eligible Loss Amount will be calculated for each share of ACLN common stock purchased on the New York Stock Exchange ("NYSE") or other U.S. Exchanges during the SEC Action Claims Period that is listed in the Proof of Claim Form, and for which adequate documentation is provided. The calculation of the Recognized Loss Per Share will depend upon several factors, including when the shares were purchased, and whether the shares were held until the conclusion of the SEC Action Claims Period, or whether they were sold during the SEC Action Claims Period and, if so, when they were sold.

Calculation of Recognized Loss Per Share is as follows during the SEC Action Claims Period:

1. **Shares Purchased During the SEC Action Claims Period and Held at the Close of the SEC Action Claims Period:** For each share of ACLN common stock purchased during the SEC Action Claims Period (June 15, 1999 through and including March 18, 2002), which an Eligible Claimant continued to hold as of the close of trading on March 18, 2002 (the end of the SEC Action Claims Period), the Recognized Loss Per Share shall be equal to the Inflation Amount on the date of purchase of the ACLN common stock, as shown on the table set forth in [Exhibit 4 to the Declaration, ("Inflation Table")].
2. **Shares Purchased and Sold During SEC Action Claims Period Without Intervening Disclosure of Adverse Information:** For each share of ACLN common stock:
 - a. that was both purchased and sold between June 15, 1999 through and including December 19, 2001;
 - b. that was both purchased and sold between December 20, 2001 through and including January 4, 2002;
 - c. that was both purchased and sold between January 5, 2002 through and including March 7, 2002;
 - d. that was both purchased and sold between March 8, 2002 through and including March 12, 2002; or
 - e. that was both purchased and sold between March 13, 2002 through and including March 17, 2002, the Recognized Loss Per Share shall be \$0.00.

This determination was made because: (i) both the purchase on the one hand, and the sale, on the other hand, occurred during a period when there was no disclosure of information that had a statistically significant adverse effect on the price of the stock; and (ii) the percentage of artificial inflation in the closing market price, as determined by the Commission's damages expert, remained constant or increased throughout those periods. Thus, any losses that Potentially Eligible Claimants may have suffered with respect to ACLN common stock that was both purchased and sold during those periods, were not

related to the alleged misstatements or omissions and are not compensable through an action for violation of the securities laws.

3. **Shares Purchased and Sold Within SEC Action Claims Period With Intervening Disclosure of Adverse Information:** For each share of ACLN common stock that was
- a. purchased between June 15, 1999 and December 19, 2001 and sold at a loss between December 20, 2001 and March 18, 2002;
 - b. purchased between December 20, 2001 and January 4, 2002 and sold at a loss between January 5, 2002 and March 18, 2002;
 - c. purchased between January 5, 2002 and March 7, 2002 and sold at a loss between March 8, 2002 and March 18, 2002; or
 - d. purchased between March 8, 2002 and March 12, 2002 and sold at a loss between March 13, 2002 and March 18, 2002, the Recognized Loss Per Share shall be equal to the difference between the Inflation Amount on the day of purchase and the Inflation Amount on the day of sale. If the difference is a negative number, the Recognized Loss Per Share shall be equal to \$0.00.

Each Potentially Eligible Claimant will be required to provide proof of his, her or its ownership position in ACLN common stock as of the opening of trading on June 15, 1999 and as of the close of trading on March 18, 2002, as well as documentation with respect to each transaction in ACLN common stock during the SEC Action Claims Period.

In calculating the Eligible Loss Amount, a sale of ACLN common stock will be matched *first* against those shares in the opening position, and then matched chronologically against each purchase made during the SEC Action Claims Period. For Potentially Eligible Claimants who made multiple purchases of ACLN common stock during the SEC Action Claims Period, the earliest subsequent sale shall be matched first against those ACLN shares in the claimant's opening position on the first day of the SEC Action Claims Period, and then matched chronologically thereafter against each purchase made during the SEC Action Claims Period.

Each Potentially Eligible Claimant's total Eligible Loss Amount will be calculated by accumulating, for each respective transaction, the product of the Recognized Loss Per Share by the respective number of ACLN shares purchased by the Potentially Eligible Claimant during the SEC Action Claims Period, as set forth above.

To the extent a Potentially Eligible Claimant had a gain from his, her or its overall transactions in ACLN common stock during the SEC Action Claims Period, the value of the Eligible Loss Amount will be zero. To the extent that a Potentially Eligible Claimant suffered an overall loss on his, her or its overall transactions in ACLN common stock during the SEC Action Claims Period, but that loss was less than the Eligible Loss Amount calculated pursuant to the provisions above, then the Eligible Loss Amount shall be limited to the amount of the actual loss.

For purposes of determining whether a Potentially Eligible Claimant had a gain from his, her or its overall transactions in ACLN common stock during the SEC Action Claims Period or suffered a loss, the Distribution Agent shall: (i) total the amount paid for all ACLN common stock purchased during the SEC Action Claims Period by the claimant (the "Total Purchase Amount"); (ii) match any sales of ACLN common stock during the SEC Action Claims Period first against the claimant's opening position in the stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining shares of ACLN common stock sold during the SEC Action Claims Period (the "Sales Proceeds"); (iv) ascribe a holding value equal to the closing price of ACLN common stock on April 2, 2002, the day ACLN resumed trading following the close of the SEC Action Claims Period (*i.e.*, \$1.60), times the number of shares of ACLN common stock purchased during the SEC Action Claims Period and still held at the end of the SEC Action Claims Period ("Holding Value"). The difference between (i) the Total Purchase Amount and (ii) the sum of the Sales Proceeds and Holding Value, will be deemed a claimant's gain or loss on his, her or its overall transactions in ACLN common stock during the SEC Action Claims Period.

Shares of ACLN common stock that were purchased prior to commencement of the SEC Action Claims Period, that were acquired by the Potentially Eligible Claimant during the SEC Action Claims Period by means of a gift, inheritance or operation of law, do not qualify as purchases on the dates of such acquisitions unless the transfer resulted in a taxable event or other change in the cost basis of the security. To the extent that there was no such taxable event or change in cost basis at the time of transfer, the

Eligible Loss Amount for that acquisition shall be zero. If, however, transferred stock was purchased during the SEC Action Claims Period by the donor, decedent or transferor, then, unless the donor's estate or the transferor submits a Proof of Claim Form with respect to the shares, the recipient's claim will be computed with respect to those shares by using the price of such stock on the date of purchase and not the date of transfer.

Each Eligible Claimant shall be allocated a *pro rata* share of the ACLN Distribution Fund based on his, her or its Eligible Loss Amount as compared to the total Eligible Loss Amounts of all Eligible Claimants, *i.e.*, Eligible Claimant's Eligible Loss Amount divided by the total of all the Eligible Loss Amounts to be paid from the ACLN Distribution Fund multiplied by the total amount of the ACLN Distribution Fund.

A payment to any Eligible Claimant of less than \$25 in total will not be included in the calculation and will not be distributed.

Each Potentially Eligible Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the Southern District of New York with respect to his, her or its Proof of Claim form.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Potentially Eligible Claimant on equitable grounds. The Court also reserves the right to modify the Plan of Allocation, or adopt a different plan of allocation, without further notice to Potentially Eligible Claimants. Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Eligible Claimants. No person shall have any claim against the Commission or Distribution Agent or other agent designated by the Commission based on the distributions made substantially in accordance with the Court-approved plan of allocation, or further orders of the Court. With the exception of the select group of Class Action Authorized Claimants who are not required to submit new Proof of Claim Forms as described above, all Potentially Eligible Claimants who fail to complete and file a valid and timely Proof of Claim Form shall be barred from participating in distributions from the ACLN Distribution Fund (unless otherwise ordered by the Court).

The ACLN Distribution Fund, less any deductions for fees and costs allowed by the Court, taxes due and other deductions pursuant to the terms of the Plan of Distribution, shall be maintained by the Distribution Agent for the benefit of the Potentially Eligible Claimants, as provided in the Plan of Distribution.