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9
10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
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14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 v.

17 WALTER NG, KELLY NG, BRUCE HORWITZ,
and THE MORTGAGE FUND, LLC

18 Defendants.
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Case No. C-13-CV-00895 SC

**PLAINTIFF'S MOTION FOR CREATION
OF FAIR FUND, APPOINTMENT OF THE
TAX ADMINISTRATOR AND FOR
TRANSFER OF PAYMENTS TO THE
MORTGAGE FUND '08 LIQUIDATING
TRUST**

Dated: January 16, 2015
Time: 10:00 a.m.
Courtroom: 1
Judge: Hon. Samuel Conti

MOTION FOR FAIR FUND, TAX ADMINISTRATOR AND TRANSFER OF PAYMENTS

1
2 Plaintiff Securities and Exchange Commission (the "Commission") will move the Court,
3 located at the Phillip Burton Federal Building, 450 Golden Gate Avenue, Seventeenth Floor,
4 Courtroom 1, San Francisco, California, 94102, on Friday, January 16, 2015, at 10:00 a.m., for an
5 Order creating a Fair Fund ("Fair Fund" or "Fund"), pursuant to Section 308(a) of the Sarbanes-
6 Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010, 15 U.S.C. § 7246 (a). The Fair Fund
7 will comprise the disgorgement, interest and civil monetary penalty payments made to the
8 Commission by defendant Bruce Horwitz, plus interest earned on those funds minus fees, taxes, and
9 other expenses related to the administration of the Fair Fund. If defendants Kelly Ng and The
10 Mortgage Fund LLC ("The Mortgage Fund") make payments at a later date pursuant to the Final
11 Judgments against them, those payments will be added to the Fair Fund. Docket Nos. 51, 52 and 53.
12 The Commission makes this Motion on the grounds that, by creating a Fair Fund with those
13 defendants' payments, the Court will facilitate using all of defendants' payments to compensate the
14 defrauded investors in the Mortgage Fund '08 LLC ("Mortgage Fund '08").

15 Second, the Commission moves for an Order appointing Damasco & Associates, LLP,
16 ("Damasco") as Tax Administrator for the Fair Fund, which is a Qualified Settlement Fund ("QSF")
17 under the Internal Revenue Code (IRC), to authorize Damasco to meet all of the tax obligations
18 required of a taxable QSF.

19 Third, the Commission moves for an Order authorizing, after payment of the necessary taxes
20 and expenses by the Tax Administrator, the transfer of the Fair Fund payments to the Mortgage Fund
21 '08 Liquidating Trust created by the Chapter 11 Bankruptcy Plan in the *In re: Mortgage Fund '08*
22 *LLC*, Case No. 11-49803-RLE-11, bankruptcy proceeding so that the Liquidating Trust can distribute
23 the Fair Fund payments to the Mortgage Fund '08 investors with a minimum of delay and expense.
24 The Commission also moves that the Fair Funds transferred by the Commission to the Mortgage
25 Fund '08 Liquidating Trust may be used to reimburse a *pro rata* share of the Mortgage Fund '08
26 Liquidating Trust's expenses of administrating the distribution. Absent further order by this Court,
27 the transferred Fair Fund payments shall not be used to pay attorney's fees or the hourly fees of
28 Liquidating Trustee Susan L. Uecker.

1 This Motion is supported by the following Memorandum, the Declaration of John S. Yun, the
2 Declaration of Susan L. Uecker, the [Proposed] Order Creating a Fair Fund, Appointing the Tax
3 Administrator and Authorizing the Transfer of Payments to the Mortgage Fund '08 Liquidating Trust,
4 the papers filed in this proceeding, and such oral argument and evidence as the Court entertains.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 Plaintiff Securities and Exchange Commission ("Commission") filed this action based upon
8 allegations that defendants Walter Ng, Kelly Ng, Bruce Horwitz and The Mortgage Fund, LLC
9 defrauded investors in a new investment fund called "Mortgage Fund '08 LLC" by falsely
10 representing to those investors that their money would be used to purchase performing deeds of trust
11 from third party loan originators. In reality, defendants immediately diverted about \$40 million of
12 Mortgage Fund '08 investor money to another fund called "R.E. Loans, LLC," which defendants
13 controlled and which was experiencing a severe cash shortage.

14 Based upon the defendants' settlements with the Commission, the Court entered Final
15 Judgments against Kelly Ng, Bruce Horwitz and The Mortgage Fund ordering them to pay
16 disgorgement, prejudgment interest and civil monetary penalties to the Commission. Docket Nos. 51,
17 52 and 53. The Commission requests that the Court create a Fair Fund, pursuant to Section 308(a) of
18 the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), as amended by the Dodd-Frank Act of 2010,
19 from Defendants' payments so that civil penalties paid pursuant to the Final Judgments may be
20 distributed to harmed investors, along with disgorgement and pre-judgment interest and appoint
21 Damasco & Associates, LLP as Tax Administrator to execute all income tax reporting requirements
22 of the Fair Fund. Because the United States Bankruptcy Court for the Northern District of California
23 has created a Liquidating Trust for the benefit of creditors (including the investors) of Mortgage Fund
24 '08, the Commission also requests that the Court authorize the transfer of the Fair Fund to the
25 Mortgage Fund '08 Liquidating Trust for distribution. This transfer will be more cost-effective and
26 efficient than having the Commission retain its own distribution agent for the distribution.

27 II. FACTUAL AND PROCEDURAL BACKGROUND

28 The Commission filed the Complaint in this proceeding on February 28, 2013. Docket No. 1.

1 According to the Complaint, Walter Ng, Kelly Ng and Bruce Horwitz managed a real estate fund
2 called R.E. Loans, LLC for the purpose of originating secured real estate loans with investor money.
3 In 2007, R.E. Loans began experiencing significant cash flow problems and could not make all of its
4 promised distributions to their investors. In December 2007, Walter Ng and Kelly Ng formed a new
5 real estate fund, Mortgage Fund '08 LLC, to raise investor money to fund R.E. Loans. Walter Ng
6 and Kelly Ng used The Mortgage Fund, which they controlled and owned, to manage Mortgage Fund
7 '08. Complaint, ¶ 1.

8 Walter Ng, Kelly Ng, Bruce Horwitz and The Mortgage Fund represented to investors that
9 Mortgage Fund '08 was a safe investment vehicle that would use investor funds to purchase real
10 estate loans secured by deeds of trust from third parties. *Id.*, ¶ 2. From December 2007 through June
11 2009, Mortgage Fund '08 raised more than \$85 million from investors. During the three-month
12 period of December 2007 through February 2008, Mortgage Fund '08 raised approximately \$40
13 million from investors, which Walter Ng, Kelly Ng and The Mortgage Fund quickly transferred to
14 R.E. Loans to cover that other fund's operating expenses and to make distributions to R.E. Loans
15 investors. When it transferred \$40 million of its investors' money to R.E. Loans, Mortgage Fund '08
16 did not receive any real estate notes or deeds of trust from R.E. Loans. Instead, Walter Ng, Kelly Ng
17 and The Mortgage Fund had Mortgage Fund '08 make an undisclosed informal \$40 million cash
18 advance to R.E. Loans without obtaining for Mortgage Fund '08 the performing deeds of trust that
19 had been promised to its investors. *Id.*, ¶¶ 27, 29-30.

20 Several months after Mortgage Fund '08 transferred the \$40 million to R.E. Loans, Walter
21 Ng, Kelly Ng, Bruce Horwitz and The Mortgage Fund tried to cover their tracks by transferring
22 several large, non-performing loans from R.E. Loans to Mortgage Fund '08 through back-dated loan
23 transfer agreements. Mortgage Fund '08 eventually purchased other loans from R.E. Loans, rather
24 than from third parties as promised to investors, but most of these loans went into default and then
25 foreclosure. *Id.*, ¶¶ 34-35. On September 12, 2011 certain creditors initiated an involuntary Chapter
26 11 bankruptcy proceeding, entitled *In Re Mortgage Fund '08 LLC*, Case No. 11-49803-RLE-11, in
27 Oakland Division of the United States Bankruptcy Court for the Northern District of California
28 ("Mortgage Fund '08 Bankruptcy").

1 The Commission charged Walter Ng, Kelly Ng and The Mortgage Fund with violating, as
2 investment advisers, their fiduciary duties under Sections 206(1) and 206(2) of the Investment
3 Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and (2), by deceiving Mortgage Fund
4 ‘08, and its investors, regarding how the offering proceeds would be use and by diverting Mortgage
5 Fund ‘08 to their own benefit. The Commission also charged Walter Ng and Kelly Ng with violating
6 Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) and Section
7 17(a) of the Securities Act of 1933 (“Securities Act”), by making material misrepresentations or
8 omissions in connection with the sale of Mortgage Fund ‘08 securities and by engaging in a
9 fraudulent scheme. 15 U.S.C. § 77q(a); 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. The Commission
10 moreover charged Bruce Horwitz with violating Section 17(a)(2) of the Securities Act and Section
11 10(b) and Rule 10b-5(b) of the Exchange Act by making material misrepresentations or omissions in
12 connection with the sale of Mortgage Fund ‘08 securities. Complaint, ¶¶ 58-73.

13 By mid-2014, the Commission reached settlements with all defendants. On July 29, 2014, the
14 Commission filed, as part of the settlements, the signed Consents of Walter Ng, Kelly Ng, Bruce
15 Horwitz and The Mortgage Fund to the entry of Final Judgments against each defendant. Docket
16 Nos. 38, 42, 44 and 48. Based on these Consents, the Court entered Final Judgments against Walter
17 Ng, Kelly Ng, Bruce Horwitz and The Mortgage Fund on August 1, 2014. Docket Nos. 50-53. The
18 Final Judgment against Walter Ng imposed permanent injunctions against future securities law
19 violations, but did require his payment of disgorgement or civil monetary penalties. Docket No. 50.
20 The Final Judgment against Kelly Ng imposed permanent injunctions and also required his payment,
21 by December 3, 2014, of \$804,600.00 in disgorgement, \$4,384.00 in prejudgment interest and
22 \$150,000.00 in civil monetary penalties to the Commission. Docket No. 53 at 3. The Final Judgment
23 against Bruce Horwitz also imposed a permanent injunction, along with an order to pay, within sixty
24 days, disgorgement of \$615,999.00, prejudgment interest of \$9,343.00 and civil monetary penalties
25 of \$100,000.00 to the Commission. Docket No. 52 at 2. The Final Judgment against The Mortgage
26 Fund imposed a permanent injunction and required its payment within thirty days of \$2,785,556.00 in
27 disgorgement, \$11,085.00 in prejudgment interest and \$725,000.00 in civil monetary penalties to the
28 Commission. Docket No. 51 at 2.

1 On September 16, 2014, Bruce Horwitz paid to the Commission the entire \$725,342.00 owed
2 under his Final Judgment. Supporting Declaration of John S. Yun (“Yun Declaration”), ¶ 2. The
3 Mortgage Fund has not made any payments to the Commission, and is therefore delinquent in its
4 payment obligations under its Final Judgment. *Id.*, ¶ 3. Kelly Ng has also failed to make any
5 payments to the Commission, and became delinquent on December 3, 2014. *Id.*

6 Meanwhile, on December 21, 2011, Mortgage Fund ‘08 and the Official Unsecured Creditors
7 Committee submitted their Joint Combined Chapter 11 Plan and Disclosure Statement (“Chapter 11
8 Plan”) in the Mortgage Fund ‘08 Bankruptcy Proceeding. Bankruptcy Docket No. 101 (Declaration
9 of Susan L. Uecker (“Uecker Declaration”), ¶ 2 and Exhibit 1). The Bankruptcy Court confirmed the
10 Chapter 11 Plan on February 3, 2012. Bankruptcy Docket No. 144. The Chapter 11 Plan created a
11 Mortgage Fund ‘08 Liquidating Trust and appointed Susan L. Uecker as the Trustee of the
12 Liquidating Trust. Chapter 11 Plan at 15. The Liquidating Trust accepts all rights and obligations
13 under the Chapter 11 Plan, and the Liquidating Trustee may liquidate and dispose of all assets of the
14 Liquidating Trust estate. *Id.* at 15, 17. The Liquidating Trustee may also make distributions from the
15 Liquidating Trust proceeds according to the priority of claims set forth in the Chapter 11 Plan. *Id.* at
16 17. The Mortgage Fund ‘08 investors are designated as unsecured Class 2 creditors, who will receive
17 *pro rata* payments (along with general unsecured creditors) from the Liquidating Trust after
18 satisfaction of the secured claims and administrative claims. *Id.* at 10-12, 17.

19 As of September 30, 2014, the Liquidating Trust held about \$6.22 million in cash deposits
20 following the disposition or sale of certain assets. Uecker Declaration, ¶ 3 and Exhibit 2. As of that
21 date, all secured claims against the Liquidating Trust were satisfied in full. *Id.*, ¶ 4 and Exhibit 2 at
22 22. The Mortgage Fund ‘08 investors had submitted a total of 397 allowed claims, with a combined
23 value of \$80,170,583, to the Liquidating Trust. The vast majority of the Liquidating Trust’s
24 distribution to the Class 2 claimants will go to the Mortgage Fund ‘08 investors. *Id.*, ¶ 5.¹ The

25
26 ¹ There are 393 approved claims from investors for a total of \$79,600,242, and another four claims
27 totaling \$570,341 from debt acquisition firms to whom investors sold and assigned their claims.
28 There is a single non-investor general unsecured creditor claim for just \$10,597 out of the total
\$80,181,180 in approved Class 2 unsecured claims. This single general creditor has agreed not to
receive any distribution from the Fair Fund by the Liquidating Trust. *Id.*, ¶¶ 5, 8.

1 Liquidating Trustee anticipates making at least a preliminary distribution to Class 2 unsecured
2 creditors in or about the first calendar quarter of 2015. *Id.*, ¶ 9.

3 In anticipation of receiving defendants' payments, the Commission's counsel had frequent
4 communications with Susan Uecker and/or her counsel. During those communications, Ms. Uecker
5 agreed that the Liquidating Trust could distribute funds that the Commission transferred from the
6 *SEC v. Walter Ng, et al.* litigation. The Liquidating Trust can also include those transferred funds
7 with a distribution being made by the Liquidating Trust to the Class 2 unsecured investors. The
8 Liquidating Trustee would not need to assess fees for including the transferred funds with a future
9 distribution to unsecured creditors, other than a pro rata share of the actual out of pocket costs (such
10 as for postage, stationary, check fees, book keeping etc.) for distributing the funds to the Mortgage
11 Fund '08 investors. Yun Declaration, ¶ 4; Uecker Declaration, ¶¶ 8-9.

12 III. LEGAL ARGUMENT

13 A. The Court Should Create A Fair Fund For Defendants' Payments.

14 The Final Judgments against Kelly Ng, Bruce Horwitz and The Mortgage Fund provide that
15 the Commission "may propose a plan to distribute the Fund subject to the Court's approval. Such a
16 plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section
17 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration
18 of any distribution of the Fund." Docket No. 51 at 3; Docket No. 52 at 3; Docket No. 53 at 4.
19 Section 308(a) of Sarbanes-Oxley, as amended, provides in relevant part:

20
21 *Civil Penalties to be used for the Relief of Victims.* If, in any judicial or
22 administrative action brought by the Commission under the securities
23 laws, the Commission obtains a civil penalty against any person for a
24 violation of such laws, or such person agrees, in settlement of any such
25 action, to such civil penalty, the amount of *such civil penalty shall, on the
26 motion or at the direction of the Commission, be added to and become
27 part of a disgorgement fund or other fund established for the benefit of
28 the victims of such violation.*

25 *See* 15 U.S.C. §7246(a) (emphasis added). By its terms, Section 308(a) mandates the creation of Fair
26 Funds with penalty payments upon the Commission's motion to the Court. This statutory provision
27 therefore reflects Congress' intent to provide a greater recovery for injured investors by allowing the
28 Commission to distribute both disgorgement and civil penalty payments as part of a Fair Fund.

1 Bruce Horwitz has paid a \$100,000 civil penalty to the Commission which may be distributed
 2 to Mortgage Fund '08 investors following the Court's Order creating a Fair Fund. Additionally, in
 3 the event that Kelly Ng pays some, or all, of his \$150,000 civil penalty or The Mortgage Fund pays
 4 its \$725,000 civil penalty, the Mortgage Fund '08 investors will be able to receive those payments as
 5 well. The use of penalty payments to create a Fair Fund were contemplated in the Final Judgments
 6 against Kelly Ng, Bruce Horwitz and The Mortgage Fund as the alternative to having the
 7 Commission transfer all civil penalty payments to the United States Treasury. *See* Docket No. 51 at
 8 3; Docket No. 52 at 3; Docket No. 53 at 4 (providing that if no distribution is requested, the Final
 9 Judgment payments will be transferred to the Treasury).

10 **B. The Court Should Appoint Damasco & Associates As Tax Administrator.**

11 The Fund constitutes a Qualified Settlement Fund (QSF) under Section 468B(g) of the
 12 Internal Revenue Code (IRC), 26 U.S.C. §§1.468B-1 through 1.468B-5. A Tax Administrator, on
 13 behalf of the Fund, should be appointed and authorized to take all necessary steps to enable the Fund
 14 to obtain and maintain the status of a taxable QSF, including the filing of all required elections and
 15 statements contemplated by those provisions. The Tax Administrator would cause the Fund to pay
 16 taxes in a manner consistent with treatment of the Fund as a QSF. The reasonable costs, fees, and
 17 other expenses incurred in the performance of the Tax Administrator's duties would be paid by the
 18 Fund in accordance with the agreement between the Commission and the Tax Administrator dated
 19 January 11, 2013.

SERVICE	FIXED FEE
Income tax returns, including items 1-6 (below).	\$1800
Income tax returns, including items 1-6 (below), for funds with assets of \$120,000 or less and are opened and closed within the same calendar year.	\$850
Loss Carryback (claim for refund) returns.	\$500

25 Fixed fee tax compliance services include:²
 26 _____

27 ² These fixed fees include all copying and routine postage expenses, any internal expenses of the Tax
 28 Administrator in performing these services, such as facsimile fees and telephone charges. Expenses
 that are not included are expedited delivery fees (such as Federal Express) and other extraordinary

- 1 1. Obtaining a federal tax identification number (“FEIN”) for the QSF.
- 2 2. Preparing and filing federal and state income tax returns, as required.
- 3 3. Where required, calculating quarterly estimated tax payments and providing information to
- 4 the Court so that payments may be made timely.
- 5 4. Making arrangements with the SEC or its agents to pay tax liability.
- 6 5. Calculating and recommending retention of a reserve, if necessary, for penalties and interest
- 7 to be assessed as a result of any late filing of tax returns and late payment of taxes.
- 8 6. Determining and complying with tax reporting obligations of the QSF relating to distributions
- 9 or payments to vendors, if applicable.

10 Damasco, a certified public accounting firm located in Half Moon Bay, California, has served
11 as a tax administrator on numerous QSF’s established by the Commission. The Commission staff
12 respectfully requests that the Court appoint Damasco as Tax Administrator to execute all income tax
13 reporting requirements, including the preparation and filing of tax returns, with respect to the Fund
14 under this Court’s jurisdiction.

15 **C. The Liquidating Trust Should Distribute The Fair Fund To Investors.**

16 This Court has the broad equitable power to craft remedies for violations of the federal
17 securities laws. *S.E.C. v. Fishbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). In addition to ordering
18 disgorgement from Kelly Ng, Bruce Horwitz and The Mortgage Fund, the Court may also approve a
19 plan for distributing defendants’ disgorgement payments to injured investors. *S.E.C. v. Wang*, 944
20 F.2d 80, 85 (2d Cir. 1991); *S.E.C. v. Certain Unknown Purchasers of Common Stock*, 817 F.2d 1018,
21 1020-21 (2d Cir. 1987). The judicial standard for approving a distribution plan is very broad; once
22 “the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement
23 plan is fair and reasonable, its review is at an end.” *S.E.C. v. Wang*, 944 F.2d at 85. *See S.E.C. v.*
24 *Certain Unknown Purchasers*, 817 F.2d at 1021 (approving insider trading distribution plan).

25 Because the Commission alleges the defrauding of the Mortgage Fund ‘08 investors through
26 _____
27 costs, such as extended telephone conferences and reports. Additional tax compliance services and
28 services for the administration of the QSF would be provided at the Commission’s request and billed
at the Tax Administrator’s current rates discounted by 20%.

1 material misstatements and/or a fraudulent scheme, it is fair and reasonable to use Defendants'
 2 payments under the Final Judgments to compensate the Mortgage Fund '08 investors. Where, as in
 3 this case, the Defendants' payments will be less than the total amount of investor losses, each
 4 Mortgage Fund '08 investor should receive a *pro rata* share of Defendants' payments based upon the
 5 net unrecovered amount of each person's investment in Mortgage Fund '08. *See S.E.C. v. Eighth*
 6 *District Electrical Pension Fund*, 397 F.3d 733, 743-44 (9th Cir. 2005) (upholding district court's
 7 approval of receivership distribution plan whereby claimant's receive a *pro rata* share of receivership
 8 assets with off-sets for prior distributions and a portion of third-party recoveries); *C.F.T.C. v.*
 9 *Topworth International, LTD*, 205 F.3d 1107, 1113-14 (9th Cir. 1999) (upholding district court
 10 approval of receivership distribution plan allowing *pro rata* payments based upon net investor
 11 losses). This Court should therefore authorize using Defendants' payments into the Fair Fund to
 12 make a *pro rata* distribution to the Mortgage Fund '08 investors.

13 To distribute Defendants' payments in a timely and cost-efficient manner, the Commission
 14 requests the Court's authorization to transfer the Fair Fund payments to the Mortgage Fund '08
 15 Liquidating Trust in the Mortgage Fund '08 Bankruptcy Proceeding. After the Liquidating Trust
 16 receives Defendants' payments, Liquidating Trustee Susan Uecker can distribute those payments to
 17 Mortgage Fund '08 investors as part of the Liquidating Trust's distribution of its own assets to the
 18 Class 2 unsecured creditors (who are overwhelmingly Mortgage Fund '08 investors). Ms. Uecker has
 19 already mailed around 800 notices of the deadline for submitting claims, and received 397 written
 20 proofs of claims from investors (or their assignees) by the March 2014 extended claim submission
 21 deadline. Uecker Declaration, ¶ 5. Ms. Uecker has allowed claims by investors or their assignees in
 22 the combined amount of \$80,170,583.³ Ms. Uecker rejected, in whole or part, 105 investor claims
 23 totaling \$6,089,032, because no written proof of claims was timely filed by the investor. *Id.*, ¶ 5 and
 24 Exhibit 4. Depending upon the Liquidating Trust's success in selling a piece of residential real
 25 estate, Ms. Uecker anticipates making an initial distribution of funds for the approved Class 2

26 _____
 27 ³ Mortgage Fund '08 investors could submit a "convenience claim" for \$1,000 or less if the investor's
 28 losses were less than \$1,000 or if the investor was willing to claim no more than \$1,000 in total
 losses. The Liquidating Trust has paid just over \$700,000 in such investor "convenience claims."
 Uecker Declaration, ¶ 6.

1 unsecured claims in or about the first calendar quarter of 2015. *Id.*, ¶ 9.

2 Authorizing the Liquidating Trustee to distribute the Fair Fund payments will avoid the delay
3 and expense of requiring a separate distribution of Defendants' payments. Such a separate
4 distribution would involve the retention of a distribution agent for this case, and the payment of the
5 distribution agent's fees and expenses from the Fair Fund payments. If the distribution agent were
6 required to develop a separate distribution plan for this case, that could involve the time and expense
7 associated with sending hundreds of notices and proofs of claims for this case to the Mortgage Fund
8 '08 investors and with reviewing and approving or rejecting the submitted claims. Additionally,
9 there would be the costs (such as for stationary, postage, book keeping and check fees) associated
10 with the process of mailing distribution checks to investors. This separate distribution process could
11 take months and cost thousands of dollars in order to replicate a distribution that the Liquidating
12 Trustee intends to undertake in the near future. Because a separate distribution in this case would not
13 benefit the Mortgage Fund '08 investors, the Court should authorize the transfer of the Fair Fund
14 payments to the Mortgage Fund '08 Liquidating Trust for distribution to those investors.

15 **IV. CONCLUSION**

16 To provide the maximum financial benefit to the defrauded Mortgage Fund '08 investors, the
17 Court should enter an Order creating a Fair Fund, should appoint Damasco & Associates as the Tax
18 Administrator for the Fair Fund, and should order the transfer of Defendants' payments to the
19 Mortgage Fund '08 Liquidating Trust for distribution, on a *pro rata* basis, to the allowed Class 2
20 Mortgage Fund '08 investors.

21 DATED: December 10, 2014

Respectfully submitted,

22
23 /s/ John S. Yun

24 John S. Yun
25 Attorney for Plaintiff
26 SECURITIES AND EXCHANGE COMMISSION
27
28