

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**U.S. Securities and Exchange Commission**, Plaintiff,  
v.  
**Augustine M. Cruciotti**, Defendant.

**Civil Action No. 1:04-cv-01267-WYD**

**Notice to Possible Qwest Fair Fund Claimants**

**To: All Persons or Entities who Purchased Common Stock, Bonds or Options of Qwest Communications International Inc. from July 27, 1999 through and including July 28, 2002**

On November 4, 2004, the United States District Court for the District of Colorado entered a Final Judgment against Qwest Communications International Inc. ("Qwest") where, without admitting or denying the allegations in the complaint of the United States Securities and Exchange Commission (the "SEC"), Qwest agreed to pay \$1 in disgorgement and a \$250 million civil penalty. *SEC v. Qwest Communications International Inc.*, Civil Action No. 04-D-2179 (OES) (D. Colo.) These funds were added to the Fair Fund previously established, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of defrauded Qwest shareholders in *SEC v. Augustine Cruciotti*, Civil Action No. 04-D-1267 (WYD) (D. Colo.). The Fair Fund also includes moneys paid by other former Qwest employees in connection with settled SEC enforcement actions. These actions include *SEC v. Roger B. Hoaglund*, Civil Action No. 05-N-482 (D. Colo.), *SEC v. William L. Eveleth*, Civil Action No. 05-M-481 (BNB) (D. Colo.), and *SEC v. Gregory M. Casey*, Civil Action No. 05-MK-480 (DBS) (D. Colo.). In total, the Fair Fund currently consists of \$252,869,387.50 ("SEC Fair Fund"). This amount, plus interest, less distribution costs, is eligible to be distributed pro rata to persons and entities that purchased Qwest common stock, bonds, or options from July 27, 1999 through and including July 28, 2002.

The SEC Fair Fund is in addition to the amount recovered in *In re Qwest Communications International Inc. Securities Litigation*, Civil Action No. 01-CV-1451-REB-CBS, pending in the United States District Court for the District of Colorado (the "Qwest Securities Litigation Settlement"). Please note that no attorneys' fees can be claimed, and none will be deducted, from the SEC Fair Fund. Please also note that the period for which recovery from the SEC Fair Fund is available is not the same as the Class Period in the Qwest Securities Litigation Settlement.

**If you purchased common stock of Qwest during the period from July 27, 1999 through and including July 28, 2002, you may be eligible to share in the SEC Fair Fund.** You have two options:

1. If you wish to recover from the SEC Fair Fund but are requesting exclusion from the Qwest Securities Litigation Settlement, the claims administrator will, upon receiving your statement requesting exclusion from the Class Action, send you a SEC Fair Fund Proof of Claim for Opt-Out Plaintiffs. **You must submit a statement regarding exclusion from the Class no later than March 23, 2006.**
2. If you wish to recover from the SEC Fair Fund and the moneys recovered in the Qwest Securities Litigation Settlement, please follow the instructions in the Notice of Pendency and Partial Settlement of Class Action ("Notice of Pendency") and Proof of Claim and Release. **You must submit a Proof of Claim and Release form no later than May 2, 2006.** The Proof of Claim and Release form will serve as your proof of claim for the SEC Fair Fund.

The claims administrator is Gilardi & Co., LLC. If, for whatever reason, you have not received the relevant documents, you may obtain copies by contacting: Qwest Securities Litigation, c/o Gilardi & Co., LLC, PO Box 808003, Petaluma, CA 94975-8003, 1-800-516-6339. Copies of the relevant documents may also be downloaded from [www.gilardi.com](http://www.gilardi.com).

**Please note** that funds from the SEC Fair Fund will be distributed based on a calculation of loss amounts as described in the Plan of Allocation set forth in Section VI of the Notice of Pendency. Any funds remaining from the SEC Fair Fund after the distribution and the payment of costs associated with the distribution will be returned to the United States District Court for the District of Colorado and thereafter disbursed according to the law.

**Please do not contact the Court or the Clerk's Office regarding this Notice.** Inquiries, other than requests for the Notice of Pendency and the Proof of Claim and Release Form, may be made to Mary S. Brady or Susie Youn, U.S. Securities and Exchange Commission, Central Regional Office, 1801 California St., Suite 1500, Denver, CO 80202.

Dated: February 28, 2006

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Wiley Y. Daniel**

Civil Action No. 04-cv-1267-WYD-MJW

Securities and Exchange Commission,

Plaintiff,

v.

Augustine M. Cruciotti,

Defendant.

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**ORDER**

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Having considered Plaintiff's Unopposed Motion for Distribution of Funds in CRIS Account and Application for Appointment of Distribution Agent (the "Motion"), it is hereby:

ORDERED that the Motion is **GRANTED**, and the Commission's settlement distribution plan as outlined in the Motion (the "Distribution Plan"), is approved. It is

FURTHER ORDERED that Gilardi & Co., LLC, is appointed distribution agent ("Distribution Agent") over the Distribution Fund with the following powers and duties:

a. The Distribution Fund shall be deposited by the Distribution Agent in an interest-bearing account at a federally insured U.S. bank. The Distribution Agent shall invest and reinvest the Distribution Fund only in the following investments: (i) direct obligations of the United States, (ii) obligations whose principal and interest are unconditionally guaranteed by the United States, and (iii) money market funds

authorized to invest solely in direct obligations of the United States. The Distribution Agent shall invest and reinvest the Distribution Fund with a view first toward conserving and preserving the principal, and second toward maximizing investment return.

b. The Distribution Agent shall allocate the Distribution Fund, less taxes, registry fees, fees paid to the Tax Administrator and the Distribution Agent, and other expenses authorized by this Court, to:

- (i) each settlement class member in In Re Qwest Communications International Inc. Securities Litigation, Civil Action No. 01-CV-1451-REB-CBS (the "Consolidated Class Action"), who (1) submits a valid claim for Class Action settlement funds, as provided in the November 23, 2005 Stipulation of Partial Settlement in the Class Action and the Notice of Pendency of Proposed Class Action Settlement, as amended ("Notice of Pendency"), which is approved for payment in the Consolidated Class Action; and (2) who purchased Qwest common stock, bonds, and/or options from July 27, 1999, through and including July 28, 2002; and
- (ii) each person who (1) elects to be excluded from the Consolidated Class Action settlement; (2) purchased Qwest common stock, bonds, and/or options from July 27, 1999, through and including July 28, 2002; and (3) submits a valid claim for distribution from the Distribution Fund.

c. After allocating the Distribution Fund, the Distribution Agent shall print and mail checks to those persons entitled to receive a distribution at the same time and, where appropriate, with the distribution of the Class Action Settlement. All checks shall

be valid for a period of 180 days from the date of issuance. Each check shall include on the check stub advice that the distribution derives, in part or in whole, from the Securities and Exchange Commission settlement proceeds which is being distributed pursuant to this Order.

d. Within 14 days after mailing the checks described in paragraph c above, the Distribution Agent shall provide the Commission with a statement showing: (a) the total fees retained by the Distribution Agent pursuant to court order; (b) the total number of checks issued; (c) an administrative control number for each check; (d) the date each check was issued; and (e) the amount of each check. The Distribution Agent shall send the statement to Mary S. Brady, U.S. Securities and Exchange Commission, Central Regional Office, 1801 California St., Suite 1500, Denver, CO 80202.

e. Within 14 days after all checks issued pursuant to paragraph c above have expired, the Distribution Agent shall provide a second statement to the Commission showing the remaining monies in the Distribution Fund. The Distribution Agent shall send the statement to Mary S. Brady, Central Regional Office, U.S. Securities and Exchange Commission, 1801 California St., Suite 1500, Denver, CO 80202.

f. The Distribution Agent shall calculate and pay from the Distribution Fund all applicable federal, state and local taxes owed by the Distribution Fund, and prepare and file all appropriate tax forms, schedules, and applications. The Court has previously authorized a Tax Administrator for the Distribution Fund and the Distribution Agent shall continue to use the Tax Administrator to assist in this effort. All taxes and Tax Administrator fees shall continue to be approved by the court before payment.

g. Other than the payment of fees for the court registry fee assessment, all other payments from the Distribution Fund, must be approved by the court in advance of payment.

h. The Distribution Agent shall promptly transfer to the Commission all unclaimed or unallocated funds remaining in the Distribution Fund after all court approved payments have been paid. The Commission shall pay those funds to the U.S. Treasury, pursuant to the written directions the Commission shall provide to the Distribution Agent.

i. The Distribution Agent shall retain paper or hard copies of the Proof of Claim forms and supporting documents for not less than one year after the final distribution of the Distribution Fund to the Authorized Claimants and electronic or magnetic media data for not less than two years after the final distribution of the Net Settlement Fund to the Authorized Claimants. The Distribution Agent is authorized to destroy all such documents upon the expiration of the relevant periods. It is

FURTHER ORDERED that, to the extent that the Distribution Agent performs any services at the specific request of the Commission relating to the Distribution Fund that are not necessary for the performance of its services in connection with the Consolidated Class Action settlement, specifically including allocating and distributing the Distribution Fund to persons who opt out of the Class Action Settlement, the Distribution Agent shall be paid its reasonable fees and costs from the Distribution Fund. All such fees must be reported to the Commission and provided the Commission has no objection to the fees, approved by the Court upon motion by the

Commission or *sua sponte*. It is

FURTHER ORDERED that when the Distribution Agent deems necessary, the Distribution Agent may, after consulting with and receiving the written consent of the Commission, and subject to approval by the Court, modify the procedures outlined herein to effectuate the general purposes of this Order. It is

FURTHER ORDERED that the Distribution Agent and the Distribution Agent's designees, agents and assistants are excused from any requirement to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of misfeasance, gross negligence or reckless disregard of duty. It is

FURTHER ORDERED that the Notice to Possible SEC Fair Fund Claimants is approved. It is

FURTHER ORDERED that the Clerk of the Court for the United States District Court for the Southern District of Texas wire transfer the total amount of the Distribution Fund of \$252,869,387.50, including all post-judgment interest earned on the account, less taxes, registry fees, fees paid to the Tax Administrator, and other expenses authorized by this Court within ten (10) days of the date from this Order, to the following account:

Payee:	SEC v. Qwest Communications Settlement Fund
Tax Payer ID#:	20-2883185
Account Number:	756-013215

Name of Bank: Bank of the West  
Business Services  
1450 Treat Blvd.  
Walnut Creek, CA 94596

ABA Routing No.: 121100782

It is FURTHER ORDERED that, after the Distribution Agent completes its duties specified herein, the Commission shall file with the Court a report describing the Distribution Agent's activities and the distribution made under this Order.

Dated: February 28, 2006

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
U. S. District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 04-cv-01267-WYD**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**AUGUSTINE M. CRUCIOTTI,**

**Defendant.**

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**Plaintiff Securities and Exchange Commission's  
Unopposed Motion for Distribution of Funds in CRIS Account  
and Application for Appointment of Distribution Agent**

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Plaintiff, United States Securities and Exchange Commission (the "Commission") hereby moves the Court to distribute, in the manner set forth below, funds deposited with this Court in a Fair Fund pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7201, et seq.] ("Sarbanes-Oxley Act") for the benefit of aggrieved investors as a result of settlements arising from the Commission's financial fraud investigation of Qwest Communications International Inc. ("Qwest"). In support thereof, the Commission states as follows:

**Background**

1. On October 21, 2004, the Commission filed a complaint against Qwest in the U.S. District Court for the District of Colorado. SEC v. Qwest Communications International Inc., Civil Action No. 04-02179-WYD. The Commission's complaint against Qwest alleged that, among other things, from at least the second quarter ended June 30, 1999 and continuing through

the first quarter ended March 31, 2002, Qwest engaged in a massive financial fraud designed to mislead the investing public about its revenue and growth. The complaint alleged that in annual, quarterly, and current reports, in registration statements that incorporated Qwest's financial statements, and in other public statements, including earnings releases and investor calls, Qwest made numerous false and misleading statements about its financial condition. The complaint alleged that Qwest fraudulently recognized over \$3.8 billion in revenue and excluded \$231 million in expenses. The complaint alleged the fraudulent scheme, approved and directed by Qwest's senior management and implemented by numerous other managers and employees, was orchestrated to meet the company's outrageously optimistic revenue projections, artificially inflate Qwest's stock price, and falsely present Qwest as a "new technology" company with enormous earnings growth and potential.

2. To date, the Commission has settled all claims against Qwest and has also reached settlements with four individuals whom the Commission alleged participated in Qwest's fraud. Each of the five defendants (collectively, the "Qwest Defendants") consented to entry of judgment, without admitting or denying the allegations in the Complaints, and the Court entered Final Judgments against: Augustine M. Cruciotti on June 21, 2004; Qwest on November 4, 2004, amended on December 3, 2004; Roger B. Hoaglund on March 17, 2005 (SEC v. Hoaglund, Civil Action No. 05-00482-OES; William L. Eveleth on April 28, 2005 (SEC v. William L. Eveleth, Civil Action No. 05-00481-RPM); and Gregory M. Casey on September 7, 2005 (SEC v Joseph P. Nacchio, et al., Civil Action No. 05-00480-MSK). Pursuant to the terms of the Final Judgments, Qwest paid \$1 in disgorgement and \$250,000,000 in civil penalties; Cruciotti paid \$200,000 in disgorgement plus prejudgment interest and \$150,000 in civil

penalties; Hoaglund paid \$200,000 in disgorgement plus prejudgment interest and \$100,000 in civil penalties; Eveleth agreed to pay \$35,575 in disgorgement plus prejudgment interest and \$75,000 in civil penalties; and Casey paid \$1,390,344 in disgorgement plus prejudgment interest and \$250,000 in civil penalties.

3. Each of the Qwest Defendants paid the relevant settlement amounts to the Clerk of Court, who deposited the funds with the Court Registry Investment System (“CRIS”) in an interest bearing account, account number 1:04-CV-001267, under the case name designation “SEC v. Augustine M. Cruciotti,” pursuant to the directives in the Final Judgments.<sup>1</sup> Based on current settlements reached with the Commission, the Qwest Fair Fund will total \$252,898,832 in principal after all installments are paid through April 2006. Pursuant to Section 308 of the Sarbanes-Oxley Act, the Qwest Fair Fund was established for the benefit of aggrieved investors. The principal amount of the Fair Fund and all post-judgment interest earned thereon is hereafter referred to as the “Distribution Fund.”

4. Moreover, the Commission is currently engaged in litigation against six former officers, directors, and/or employees of Qwest that may result in additional payments into the Distribution Fund. These individuals are Joseph P. Nacchio, Robert S. Woodruff, Robin R. Szeliga, James J. Kozlowski, Frank T. Noyes, and Afshin Mohebbi. SEC v. Joseph P. Nacchio, et al., Civil Action No. 05-MK-480 (OES) (D. Colo.).

#### **The Proposed Distribution Plan**

5. Pursuant to each of the orders entered against the Qwest Defendants, the Commission may by motion propose a plan to distribute the Distribution Fund subject to the

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<sup>1</sup> The Commission intends to ask the Court to amend Eveleth’s Final Judgment to direct the Clerk of this Court, upon receipt of Eveleth’s final payment, to forward the payment to an account in the control of the proposed Distribution Agent.

Court's approval. The Commission proposes transferring the Distribution Fund for distribution to aggrieved investors through the proposed consolidated class action settlement in In re Qwest Communications International Inc. Securities Litigation, Civil Action No. 01-CV-1451-REB-CBS (D. Colo.) (the "Consolidated Class Action").

6. Based in large part on the same fraudulent scheme alleged by the Commission in its complaints against the Qwest Defendants, class action plaintiffs have also filed federal district court actions against Qwest and several former officers and employees of the company. On November 23, 2005, Qwest and other defendants in the Consolidated Class Action filed a Stipulation of Partial Settlement (the "Stipulation", attached as Exhibit A) contemplating Qwest's settlement of the consolidated securities class action litigation for \$400 million. On January 5, 2006, the Court in that action issued an Order Preliminarily Approving Partial Settlement and Approving Form and Manner of Notice (attached as Exhibit B). The Court approved, in form and content, the Notice of Pendency and Proposed Partial Settlement of Class Action (attached as Exhibit C).

7. The Commission is vested with broad discretion in fashioning distribution plans for disgorgement funds. *See SEC v. Certain Unknown Purchasers*, 817 F.2d 1018 (2d Cir. 1987); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989); *SEC v. Wang*, 944 F.2d 80, 84 (2<sup>nd</sup> Cir. 1991) (distribution plan will be approved if it is "fair and reasonable"). *See also SEC v. Finacor Anstalt*, 1991 WL 173327, at \*3 (S.D.N.Y. 1991) (rejecting challenge to SEC's proposed distribution plan and holding that the "equities weigh in favor of limiting payment at this time to the claimants suffering the greatest injury"). This discretion "includ[es] the flexibility to decide that certain groups of claimants would receive payments and others would not." *Levine*, 881

F.2d at 1182. This authority is directly relevant to Fair Fund distributions authorized under the Sarbanes-Oxley Act, which allows penalties to be distributed with disgorgement.

8. In distributing the Distribution Fund, which is substantially less than total investor losses, the Commission seeks here to maximize the amount of money returned to aggrieved investors and to minimize administrative costs. The Commission believes that these goals will best be reached by adopting the distribution procedures currently being considered in the Consolidated Class Action.

9. Because the Consolidated Class Action complaint sets forth allegations that are substantially similar to the allegations in the Commission's complaint, investors who submit valid claims under the proposed plan of allocation in the Consolidated Class Action, reflect also the group of injured investors who are entitled to recover from the Distribution Fund. The scope of the class includes all persons or entities that purchased Qwest common stock, notes, debts, and options during the period beginning May 24, 1999, through and including, July 28, 2002. Based on the misconduct alleged by the Commission, investors purchasing Qwest securities during the period July 27, 1999, through July 28, 2002, may be eligible to recover from the Distribution Fund.<sup>2</sup> In essence, the investors allegedly injured as a result of the conduct alleged in the Commission's cases appear to be a subset of the class that is entitled to receive funds in the Consolidated Class Action.

10. Moreover, investors who traded within the relevant time period and who choose to opt out of the distribution from the Consolidated Class Action are nevertheless entitled to

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<sup>2</sup> On July 27, 1999, Qwest issued its second quarter earnings release and Form 8-K announcing earnings for its second quarter ended June 30, 1999, the earliest period of misconduct alleged by the Commission. On July 28, 2002, Qwest issued a press release announcing its intention to restate its financial statements. As a consequence, the Commission believes that investors purchasing through and including these times may be eligible to receive a distribution from the Distribution Fund.

recover from the Distribution Fund. The distribution to opt-out plaintiffs will also be based on the plan of allocation developed in the Consolidated Class Action.

11. Finally, counsel for plaintiffs in the Consolidated Class Action will receive no portion of the Distribution Fund as payment for their fees or expenses. Additionally, the Distribution Fund will not be considered as increasing the total fund for the purpose of calculating compensation for class action plaintiffs' counsel. See Securities Exchange Act of 1934 § 21(d)(4) [15 U.S.C. § 78u(d)(4)].

**Appointment of Consolidated Class Action Claims Administrator as Distribution Agent**

12. The Commission requests that the Court appoint Gilardi & Co., LLC, as claims administrator for the Distribution Fund. Gilardi is the claims administrator appointed in the Consolidated Class Action and it will be responsible for processing and allocating the settlement funds to class members in accordance with the proposed Consolidated Class Action allocation plan. See Exhibit B, at 10. The settlement proceeds obtained in the Consolidated Class Action are contemplated to be \$400 million. Gilardi is also willing to act as distribution agent for the Distribution Fund in exchange for the nominal fees outlined in its Fair Fund Administration Estimate (attached as Exhibit D), which includes fees to handle claims for those investors who opt out of the Consolidated Class Action settlement.

13. If this Court approves the proposed Distribution Plan, Gilardi will mail a Notice to Possible SEC Fair Fund Claimants (substantially in the form attached as Exhibit E) to all possible class action claimants. Shareholders eligible to share in the Distribution Fund will follow the same instructions and complete the same Proof of Claim Form as shareholders who want to share in the Consolidated Class Action settlement. Moreover, the Notice to Possible

SEC Fair Fund Claimants makes it clear that shareholders who elect not to participate in the Consolidated Class Action settlement are still eligible to share in the Distribution Fund. Shareholders eligible to make a claim against the Distribution Fund need not release any of the Consolidated Class Action defendants to do so. These opt-out Consolidated Class Action plaintiffs will receive a separate Proof of Claim Form from Gilardi. Gilardi has agreed to allocate the Distribution Fund proportionally to these claimants in accordance with the proposed Consolidated Class Action plan of allocation.

14. Funds from the Distribution Fund will be distributed on the same timetable as the Consolidated Class Action settlement. Specifically, after Proof of Claim Forms are returned by eligible claimants seeking to share in the Distribution Fund, deficiency notices will be sent by Gilardi to those persons and entities that have not completed the Proof of Claim Form correctly. After all of the deficiency notices are satisfactorily resolved, the Distribution Fund would be distributed by Gilardi to eligible claimants pro rata less any associated cost and included in the same check as the Consolidated Class Action settlement proceeds.

15. To effectuate the distribution, the Distribution Fund will be deposited into an account maintained by Gilardi. At the time of distribution, the Consolidated Class Action settlement amount also will be transferred to an account maintained by Gilardi. The combined settlement proceeds will then be transferred to authorized claimants. Gilardi has agreed that, without additional charge, it will allocate the Distribution Fund proportionally in accordance with the proposed Consolidated Class Action plan of allocation. Gilardi will print and mail all checks in accordance with the proposed Consolidated Class Action settlement; provide the Commission with appropriate status reports; and to the extent there are any funds remaining from

the Commission portion of the combined settlement fund, Gilardi will promptly transfer those unclaimed or unallocated monies to the Commission, which in turn will pay those funds to the U.S. Treasury.

**Statement Regarding Conferring with Counsel**

16. Pursuant to Rule 7.1 of the Local Rules, the Commission has provided copies of this Motion and proposed Order to counsel for all defendants who have paid monies into the Distribution Fund. The Commission asked counsel for those defendants to communicate any objection to this Motion to the Commission's undersigned counsel. At the time of filing this Motion, counsel for the Commission has not received any objections to its request to distribute funds and appoint a distribution agent.

**Conclusion**

17. The most efficient way to fairly distribute the Distribution Fund to injured investors is to use the proposed Consolidated Class Action's distribution plan and procedures. The Court and Commission will conserve substantial time and resources by not independently having to hire a claims agent, locate and notify potential injured investors, and process claims. Moreover, this approach has been approved in other actions where the Commission has distributed Fair Fund monies through class action settlements. See, e.g., SEC v. Lucent Technologies, Inc., Civil Action No. 04-CV-2315 (WHW) (motion granted Mar. 9, 2005) (D. N.J.); SEC v. Del Global Technologies Corp., Civil Action No. 04-CV-4092 (CM/GAY) (S.D. N.Y.) (motion granted Jan. 11, 2005); and SEC v. TALX Corporation, Civil Action No. 4:05CV00368-HEA (E.D. Missouri) (motion granted May 18, 2005) (where the use of the class

action distribution mechanism presents a fair and reasonable way to distribute funds recovered in related Commission enforcement actions).

WHEREFORE, the Commission requests that the Court enter the proposed Order filed herewith which:

- (1) approves the Commission's plan to distribute the Distribution Fund (the "Distribution Plan"), which adopts and uses the distribution plan currently being considered by the United States District Court for the District of Colorado in the Consolidated Class Action;
- (2) appoints the Consolidated Class Action's claims administrator, Gilardi & Co., LLC, as Distribution Agent for the Distribution Fund;
- (3) approves the Notice to Possible SEC Fair Fund Claimants; and
- (4) directs the Clerk of Court to transfer the Distribution Fund, including all post-judgment interest earned on the account, less taxes, registry fees, fees paid to the Tax Administrator, and other expenses authorized by this Court, to the Distribution Agent for distribution to injured investors pursuant to the Distribution Plan.

Respectfully submitted,

/s/ Mary S. Brady\_\_\_\_\_

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Dated: February \_\_\_\_, 2006