

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>06-cv-6402 (ADS)</b>
v.	)	
	)	
CHINA ENERGY SAVINGS TECHNOLOGY, INC.,	)	
NEW SOLOMON CONSULTANTS, CHIU WING	)	<b>Related Case No. 13-cv-5364</b>
CHIU, LAI FUN SIM a/k/a Stella Sim, SUN LI, JUN	)	
TANG ZHAO,	)	
	)	
<b>Defendants,</b>	)	
	)	
and	)	
	)	
AMICORP DEVELOPMENT LIMITED, ESSENCE	)	
CITY LIMITED, PRECISE POWER HOLDINGS	)	
LIMITED, YAN HONG ZHAO, AI QUN ZHONG,	)	
and TUNG TSANG,	)	
	)	
<b>Relief Defendants.</b>	)	
	)	

**DISTRIBUTION PLAN**

**I. Introduction**

1. On December 4, 2006, the U.S. Securities and Exchange Commission (“SEC” or “Commission”) filed fraud charges in federal district court against China Energy Savings Technology, Inc. (“China Energy” or the “Company”), Chiu Wing Chiu (“Chiu”), Lai Fun Sim (a/k/a Stella Sim) (“Sim”), Sun Li (“Li”), Jun Tang Zhao (“Zhao”), and New Solomon Consultants (“New Solomon”) (collectively, the “Defendants”) and named Amicorp Development Limited, Essence City Limited, Precise Power Holdings Limited, Yan Hong Zhao, Ai Qun Zhong, and Tung Tsang as relief defendants (collectively, the “Relief Defendants”). The Complaint alleged that,

from 2004 to 2006, the Defendants violated the federal securities laws when they orchestrated an elaborate stock manipulation scheme commonly known as a “pump and dump.” Dkt. No. 2. All of the Defendants reside or have operations abroad. The Defendants were charged with: (1) fraudulently obtaining a Nasdaq National Market System listing; (2) causing the price of China Energy’s stock to artificially inflate through nominee transactions and through the dissemination to investors and the public of false and misleading material information about China Energy; and (3) selling into the United States Capital markets millions of shares of China Energy stock at artificially inflated prices which the Defendants and other insiders had acquired at little or no cost.

2. On March 27, 2009, a final judgment was entered against the Defendants. The Court ordered a permanent injunction and more than \$34 million in joint and several disgorgement and prejudgment interest. In addition, Chiu and Sim were each ordered to pay a \$1,000,000 civil penalty and Li and Zhao were each ordered to pay a \$75,000 civil penalty. Dkt. No. 107. On July 6, 2009, the Court granted summary judgment in favor of the Commission against the Relief Defendants. On July 31, 2009 a Judgment was entered against the Relief Defendants and an Amended Judgment was entered on December 23, 2009 (collectively, the “Judgments”). The Judgments ruled that the Defendants had used the Relief Defendants’ U.S. brokerage accounts to sell China Energy shares, and ordered the Relief Defendants’ to pay disgorgement, in a collective total, of approximately \$3.9 million, representing the funds held in those accounts, plus any accrued interest thereon. Dkt. Nos. 111 and 117.

3. On December 17, 2015, the Court entered an Order directing Fidelity Investments to unfreeze the funds held in the name of the Relief Defendants at Fidelity Investments and to transfer those funds to the SEC for distribution to harmed investors. The Order also established a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the

Dodd-Frank Act of 2010, [15 U.S.C. § 7246(a)], for the funds transferred from Fidelity Investments to the SEC, in accordance with the Judgments, for the benefit of harmed investors (the “China Energy Fair Fund” or the “Fair Fund”). Further, the Order appointed Damasco & Associates LLP (“Damasco”),<sup>1</sup> a certified public accounting firm located in San Francisco, California, as Tax Administrator, to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the Fair Fund and appointed Kurtzman Carson Consultants, LLC (“KCC”), as the Distribution Agent, to oversee all aspects of the administration and distribution of the Fair Fund, in coordination with the Commission staff, in accordance with the terms of a distribution plan to be approved by the Court. Dkt. No. 120.

4. On May 18, 2016, in a related action, *SEC v. Lee Chi Ling, et al.*, 13-cv-5364 (E.D.N.Y.) (the “Ling Action”), the Court issued an Order to combine the funds held by the Commission in the Ling Action with the China Energy Fair Fund for distribution to harmed investors. Dkt. No. 124.

5. On August 3, 2017, in a related administrative proceeding, *In the Matter of Moore Stephens Wurth Frazer & Torbet LLP, et al.*, Admin. Proc. File No. 3-14167 (the “Moore Stephens Proceeding”), the Commission issued an Order<sup>2</sup> to transfer and consolidate the funds held by the Commission in the Moore Stephens Proceeding with the China Energy Fair Fund for distribution to harmed investors.

6. The balance of the Fair Fund as of May 30, 2018 is approximately \$5,688,915.09.

## II. Definitions

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

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<sup>1</sup> As of October 1, 2016, Damasco & Associates LLP was acquired by Miller Kaplan Arase LLP. The firm’s engagement with the SEC and its ability to carry out its duties as appointed Tax Administrator for this matter have not changed.

<sup>2</sup> Order Combining Funds with the China Energy Fair Fund, Exchange Act Rel. No. 81307 (Aug. 3, 2017).

7. “**Affiliate**” shall have the meaning set forth in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101(2).

8. “**Check-cashing Period**” means the ninety (90) days following the mailing of Distribution Payment checks to Eligible Claimants in accordance with this Distribution Plan.

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 the opportunity to cure such deficiency. Subject to certain extensions provided for in this Distribution Plan, the deadline to cure deficiencies shall be twenty-one (21) days from the date of the Claim Deficiency Notice.

10. “**Claims Bar Date**” means the date established in accordance with this Distribution Plan by which Proof of Claim Forms must be postmarked by or submitted electronically in order to receive consideration under this Distribution Plan. Subject to certain extensions provided for in this Distribution Plan, the Claims Bar Date will be the first business day following the calendar date one hundred twenty (120) days from the initial mailing of the Notice Packet.

11. “**Claims Determination Date**” shall mean the date on or before which the Distribution Agent is to reach its final determination concerning the validity and amount of each Potentially Eligible Claimant’s claim. Except as otherwise provided herein, the Claims Determination Date shall be on or about two hundred seventy (270) days following the Claims Bar Date.

12. “**Close of Trading**” shall mean 4:00 p.m. Eastern Standard Time (“EST”) or Eastern Daylight Time, as appropriate for the trading date.

13. “**Days**” means calendar days, unless otherwise specified herein.

14       **“Determination Notice ”** shall mean the notice sent by the Distribution Agent to all Potentially Eligible Claimants who submitted a Proof of Claim Form. The Determination Notice will set forth the Distribution Agent’s determination of the eligibility of the claim (wholly or partially deficient or eligible) and the Recognized Claim. The Determination Notice will constitute the Distribution Agent’s final ruling regarding the status of the claim.

15       **“Distribution Agent”** refers to KCC (collectively, with all employees, agents, consultants, or independent contractors of such firm), which has been appointed by the Court to administer and distribute the Fair Fund in accordance with the terms of this Distribution Plan and the Court’s orders.

16       **“Distribution Payment”** shall mean the funds allocated to an Eligible Claimant in accordance with this Distribution Plan.

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

18       **“Distribution Plan Notice ”** shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the Fair Fund and their obligation to file a Proof of Claim Form in order to participate. The Distribution Agent, in consultation with the Commission staff, 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 Fair Fund relates to the “pump-and-dump” scheme involving the common stock of China Energy, the means of obtaining Notice Packets, and the Claims Bar Date. The Distribution Plan Notice shall advise Potentially Eligible Claimants that by participating in the distribution of the Fair Fund, they will not be releasing any rights or claims they may have against any party (other than with respect to the Distribution Agent), including but not limited to, any party’s past and

present directors, officers, promoters, advisers, agents, affiliates, nominees, assigns, creditors, or controlled entities. The notice will be both mailed and published according to the schedule detailed herein.

19. **“Eligible Claimant”** means a Potentially Eligible Claimant who suffered a Recognized Loss per Share as a result of transactions in Eligible Securities during the Recovery Period and who is determined by the Distribution Agent to be eligible for a Distribution Payment from the Net Available Fair Fund pursuant to the Plan of Allocation. An Eligible Claimant shall not include:

- a. Any director or officer, promoter, or nominee, past or present, of the Defendants or Relief Defendants who served in such a capacity during the Recovery Period and were directly or indirectly involved in the conduct detailed in the Complaint;
- b. Any defendant or relief 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 unless and until such defendant or relief 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 or relief defendant’s timely filed Proof of Claim Form;
- c. 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 unless and until such defendant is found not guilty in all such criminal actions prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Proof of Claim Form;

- d. Any Affiliates, current or former employees, consultants, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities of any of the foregoing persons or entities described in paragraph 18 (a)-(c) above;
- e. Any Person who received China Energy common stock at no or nominal cost;
- f. Any Person who purchased or otherwise received China Energy common stock in connection with or as the result of any agreement, understanding, arrangement, or contract, oral or written, with Defendant Jason Genet,<sup>3</sup> China Energy, or any other Defendant or Relief Defendant or any persons or entities distributing shares on behalf of any of them;
- g. Any Person who received China Energy restricted common stock or common shares pursuant to S-8 issued directly from the transfer agent for China Energy;
- h. Any Person who purchased shares through KGIA Asia from November 24, 2004 through December 8, 2004 and/or sold shares through KGIA Asia from November 24, 2004 through December 31, 2004, in connection with Defendants' first pump of China Energy's trading volume and share price, referenced in Paragraphs 29-31 of the Complaint ;
- i. Any Person who purchased or received China Energy common stock as a participant in or based upon communications regarding the "NASDAQ stock giveaway" program, referenced in Paragraph 24 of the Complaint;

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<sup>3</sup> Jason M. Genet ("Genet") was charged by the Commission with perpetrating an illegal "pump and dump" manipulation of the China Energy Common stock on September 30, 2009. Without admitting or denying the allegations of the Complaint, Genet consented to the entry of a Final Judgment on August 30, 2010, enjoining him from future fraudulent activity and barring him for 5 years from participating in any offers of penny stocks. He was also ordered to pay disgorgement, prejudgment interest and a civil monetary penalty, all of which remain unpaid. *SEC v. Jason M. Genet*, 09-cv-4215.

- j. Any Person who “purchased or received China Energy common stock based upon communications regarding the “One for One” program, referenced in Paragraphs 32 – 34 of the Complaint;
- k. Anyone who did not purchase China Energy common stock on the open market in the United States during the Recovery Period;
- l. Any Person who assigned their right to obtain a recovery in the Commission’s action against the Defendants or Relief Defendants; or
- m. The Distribution Agent, its employees, and those Persons assisting the Distribution Agent in its role as the Distribution Agent.

20. “**Eligible Purchase Date**” is the “trade” date as distinguished from the “settlement” date on which China Energy common stock was purchased.

21. “**Eligible Securities**” refers to shares of China Energy common stock, ticker CESV, purchased on the open market in the United States during the Recovery Period. Transactions in common stock during the Recovery Period that are pursuant to, or in connection with, a swap, an option, or other derivative will not be eligible for a recovery.

22. “**Fair Fund**” refers to the Fair Fund created by the Court in this matter, along with the monies transferred to this action from the Ling Action and the Moore Stephens Proceeding, plus any accumulated interest or earnings thereon or any additions thereto, as may be provided by future Court order or agreement in related cases or otherwise.

23. “**Minimum Distribution Amount**” shall mean no Eligible Claimant shall receive a Distribution Payment unless the *pro rata* share of their Recognized Claim is equal to or greater than \$10.00.



24 **“Net Available Fair Fund”** means the Fair Fund, less fees and costs of administering the Fair Fund and implementing the Distribution Plan, any amounts expended for tax obligations and United States Treasury’s Bureau of Fiscal Services (“BFS”) fees expended in accordance with this Distribution Plan.

25 **“Notice Packet”** shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants. The Distribution Agent, in consultation with the Commission staff, shall prepare the Notice Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and the Proof of Claim Form (together with instructions for completion of the Proof of Claim Form).

26 **“Person”** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.

27 **“Plan of Allocation”** means the methodology by which a Potentially Eligible Claimant’s Recognized Claim is calculated. The Plan of Allocation is set forth in Exhibit A attached hereto.

28 **“Potentially Eligible Claimants”** means those Persons, or their lawful successors, identified by the Distribution Agent as having possible claims to recover from the Net Available Fair Fund under this Distribution Plan, or Persons asserting that they have possible claims to recover from the Net Available Fair Fund under this Distribution Plan.

29 **“Pro-Rata Share”** is a computation intended to measure Potentially Eligible Claimants’ claims against one another. Should the sum of Recognized Claims of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro-rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant’s *Pro-Rata* Share of the Net Available Fair Fund as the Eligible

Claimant's Recognized Claim divided by the sum of total Recognized Claims of all Eligible Claimants.

30 **"Proof of Claim Form"** means the form designed by the Distribution Agent for the filing of claims in accordance with the terms of this Distribution Plan. The Proof of Claim Form will require, at a minimum, sufficient documentation reflecting any Potentially Eligible Claimant's purchases and dispositions of Eligible Securities during the Recovery Period.

31 **"Recognized Claim"** shall be the Eligible Claimant's compensable allocation amount calculated pursuant to the methodology of the Plan of Allocation.

32 **"Recognized Loss per Share"** shall mean the Potentially Eligible Claimant's recognized loss per share of Eligible Securities during the Recovery Period, pursuant to the Plan of Allocation, attached as Exhibit A.

33 **"Recovery Period"** shall mean July 1, 2004 and continuing until 11:59 p.m. EST on February 15, 2006, inclusive.

34 **"Rejection Notice"** shall mean the final notice sent by the Distribution Agent to a Potentially Eligible Claimant stating the Distribution Agent's final determination, after the opportunity to cure deficiencies has passed, that the Potentially Eligible Claimant's claim is not eligible to receive a distribution.

35 **"Summary Notice Publication"** shall mean publication of the Distribution Plan Notice, or a notice closely resembling the Distribution Plan Notice, in print or internet media in a manner deemed appropriate by the Distribution Agent and not unacceptable to the Commission staff. Such notice (the text of which shall be approved by the Commission staff) shall include, at a minimum, a statement that the Fair Fund relates to purchases of Eligible Securities during the Recovery Period and the means of obtaining a Notice Packet.

36 “**Tax Administrator**” means Damasco n/k/a Miller Kaplan Arase LLP, the firm appointed by the Court on December 17, 2015 as the Tax Administrator in this matter.

### **III. Administration of the Fair Fund**

#### **A. General Provisions**

37 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 Net Available Fair Fund to each Eligible Claimant in accordance with the provisions of this Distribution Plan.

38 All claims asserted by a Potentially Eligible Claimant must be verified on the basis of a sworn Proof of Claim Form, executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States.

39 Any claim asserted by a Potentially Eligible Claimant 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.

40 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. Files that do not comply with the required electronic filing format may be rejected.

41 In determining the Recognized Claim for an Eligible Claimant, the Distribution Agent may aggregate the accounts held by an Eligible Claimant.

42 Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C. § 1002(3), which do not include Individual Retirement Accounts, and such plan's participants, are properly made by the 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 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 accountholders 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.

43 Recognized Claims totaling less than the Minimum Distribution Amount of \$10.00 will not be paid.

B. Identification of and Notice to Potentially Eligible Claimants

44 The Distribution Agent will, insofar as is practicable, use its best efforts to identify Potentially Eligible Claimants from a review of trading records and account information provided by the transfer agent for China Energy, registered broker-dealers, market makers, investment advisors and other sources.

45 In order to ensure a timely mailing to Potentially Eligible Claimants, the transfer agent or any other entity, described in paragraph 44, shall deliver the requested documents to the Distribution Agent no later than fifteen (15) days from the date the document request is received.

The company and/or its representatives shall also provide assistance to the Distribution Agent, as necessary, to obtain information from the transfer agent and/or Depository Trust and Clearing Corporation regarding banks and brokers that traded in Eligible Securities during the Recovery Period.

46 The Distribution Agent will create a mailing database consisting of the records provided by China Energy's transfer agent or other entities described in paragraph 44, provided by the SEC, or otherwise obtained by the Distribution Agent.

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

- a. Design and submit a Notice Packet, including a Distribution Plan Notice and a Proof of Claim Form, to the Commission staff for review and approval;
- b. Create a mailing and claims database, consisting of information in the trading records for Eligible Securities obtained by the Commission staff or information otherwise obtained by the Distribution Agent;
- c. Run a National Change of Address search to obtain updated addresses for all Potentially Eligible Claimants recorded in the database;
- d. Mail by United States First Class Mail a Notice Packet to each Potentially Eligible Claimant known to the Distribution Agent;
- e. Establish a website for the administration of the Fair Fund, [www.ChinaEnergyFairFund.com](http://www.ChinaEnergyFairFund.com), from which each Potentially Eligible Claimant may download a copy of the Notice Packet and other relevant documents online;
- f. Establish an email address of [info@ChinaEnergyFairFund.com](mailto:info@ChinaEnergyFairFund.com);

- g. Establish a toll-free telephone number, 866-666-7977, by which Potentially Eligible Claimants can obtain information about the Fair Fund;
- h. Publish a copy of the Summary Notice Publication, approved by the Commission staff, and disseminate the Summary Notice Publication via PRNewswire once a week for three (3) consecutive weeks within five (5) days of the initial mailing of Notice Packets to Potentially Eligible Claimants; and
- i. Deliver electronic copies of the Proof of Claim Form to electronic filers who regularly submit electronic claims on behalf of their clients.

48 The Distribution Plan Notice will notify Potentially Eligible Claimants of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Proof of Claim Form by request or from the Fair Fund's website, and provide instructions for submitting a claim.

49 The Distribution Agent will mail notices to the Distribution Agent's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process ("record holders") that may have records of holders of Eligible Securities during the Recovery Period. The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Eligible Securities:

- a. Notify the respective beneficial owners within fourteen (14) days of receipt of the Distribution Agent's notice so that beneficial owners may timely file a claim. The burden will be on the record holders to ensure the Notice Packets and other relevant materials are properly disseminated to their customers; and/or

b. Provide the Distribution Agent within fourteen (14) days of receipt of the Distribution Agent's notice, a list of last known names and addresses for all beneficial owners for whom the record holders purchased Eligible Securities during the Recovery Period so that the Distribution Agent can communicate with them directly.

50 Notice Packets will be available on the Fair Fund's website to brokerages and other institutions that hold Eligible Securities in "street name" for the benefit of their customers who are the beneficial owners of the securities.

51. The Distribution Agent will promptly provide a Notice Packet to any Potentially Eligible Claimant upon request. Additionally, the Distribution Agent shall continue to supply the Notice Packets to Potentially Eligible Claimants who contact the Distribution Agent requesting a copy via mail or phone prior to the Claims Determination Date.

52 The Distribution Agent will publish a copy of the Summary Notice Publication, approved by the Commission staff, and disseminate the Summary Notice Publication via PRNewswire once a week for three (3) consecutive weeks within five (5) days of the initial mailing of Notice Packets to Potentially Eligible Claimants. The Summary Notice Publication will notify the public of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan and Proof of Claim Form by request or from the Fair Fund's website, and provide instructions for submitting a claim.

53 The Fair Fund's website, located at [www.ChinaEnergyFairFund.com](http://www.ChinaEnergyFairFund.com), will make available a copy of the Distribution Plan Notice, the approved Distribution Plan, Court documents, and will provide information regarding the claims process and eligibility requirements for participation in the Fair Fund. The website will also include a copy of the Proof of Claim Form

and related materials in downloadable form, and such other information covering process or substance that the Distribution Agent believes will be beneficial to Potentially Eligible Claimants. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website.

54 The Distribution Agent will establish and maintain a toll-free telephone number for Potentially Eligible Claimants to call to speak to a live representative of the Distribution Agent during its regular business hours, 9:00 a.m. to 8:00 p.m., EST, or, outside of such hours, to hear prerecorded information about the Fair Fund. The Distribution Agent will also establish and maintain a traditional mailing address and an email address to enable Potentially Eligible Claimants to correspond with the Distribution Agent.

55 The Distribution Agent will provide a copy of the approved Distribution Plan to the Commission staff and request that the Commission staff post the Distribution Plan on the Information for Harmed Investors Page on the Commission's website, [www.SEC.gov](http://www.SEC.gov), and establish a link to the Fair Fund's website.

56 The Distribution Agent will deliver electronic copies of the Proof of Claim Form to electronic filers who regularly submit electronic claims on behalf of their clients.

57 The Distribution Agent shall attempt to locate any Potentially Eligible Claimant whose Notice Packet has been returned by the United States Postal Service ("USPS") as undeliverable. The Distribution Agent shall immediately mail again any returned undelivered mail for which the USPS has provided a forwarding address. Additionally, the Distribution Agent may engage a third-party search firm (Experian) to conduct more rigorous searches for missing Potentially Eligible Claimants. Additional efforts to identify new addresses for returned



undelivered mail will be conducted as necessary and economically reasonable after consultation with the Commission staff.

C. Claims Process

58 The Claims Bar Date will be clearly identified in all materials as the first business day following the calendar date one hundred twenty (120) days from the initial mailing of the Notice Packet pursuant to paragraph 47 above.

59 To avoid being barred from asserting a claim, each Potentially Eligible Claimant must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all supporting documentation on or before the Claims Bar Date.

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

61 Proof of Claim Forms must be properly filled out per the instructions provided by the Distribution Agent, and must be accompanied by documentation the Distribution Agent deems sufficient to substantiate the claim. This information may include third-party documentary evidence of purchases and dispositions of Eligible Securities during the Recovery Period.

62 The Distribution Agent will review all claim submissions and determine the eligibility of each Potentially Eligible Claimant to participate in the Fair Fund by reviewing the claim data and supporting documentation (or the lack thereof), verifying the claim, and calculating each Potentially Eligible Claimant's Recognized Claim pursuant to the Plan of Allocation. Each Potentially Eligible Claimant will 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. The Distribution Agent will have the right to request, and the Potentially Eligible Claimant will have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

D. Deficiency and Claim Determination Processes

63 The Claim Deficiency Notice will provide to each Potentially Eligible Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (*e.g.*, failure to provide required information or documentation). The Claim Deficiency Notice shall be provided to such affected claimants within one hundred eighty (180) days of the Claims Bar Date. The Claim Deficiency Notice will also notify the Potentially Eligible Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any Potentially Eligible Claimant with a deficient claim will have twenty-one (21) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

64 The Distribution Agent shall have the authority, in its sole discretion, on a case-by-case basis, to extend the Claims Bar Date for one or more Potentially Eligible Claimants and waive technical claim deficiencies and approve claims.

65 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.

66 On or before the Claims Determination Date, the Distribution Agent shall mail by U.S. First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a Proof of Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusion regarding their calculated Recognized Claim. The Determination Notice will be sent on or about

two hundred seventy (270) days after the Claims Bar Date. All determinations made by the Distribution Agent in accordance with this Distribution Plan shall be final.

67. In rejecting any Proof of Claim Form, after having provided an opportunity to cure, the Distribution Agent shall provide each Potentially Eligible Claimant with a Rejection Notice, setting forth the basis for the rejection of the claim. The Rejection Notices will be mailed at the same time as the Determination Notices. All rejection determinations made by the Distribution Agent in accordance with this Distribution Plan shall be final.

68. The Distribution Agent shall distribute the Net Available Fair Fund to all Eligible Claimants only after all timely submitted Proof of Claim Forms have been processed and all Potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

69. Within thirty (30) days following the Claims Determination Date, the Distribution Agent shall prepare a final payee list that includes the names of all Eligible Claimants and the Recognized Claim of each Eligible Claimant. The Distribution Agent shall provide the final payee list to the Commission staff, and upon review, the Commission staff shall petition the Court to transfer funds held at the Commission to the Distribution Agent for distribution pursuant to this Distribution Plan. In recommending a distributable amount to the Court, the Distribution Agent will retain a prudent reserve to pay any taxes, fees and expenses payable in connection with the Fair Fund, as well as a reasonable contingency for potential unforeseen issues. The final payee list shall, upon request, be made available to the Court under seal.

#### **IV. Establishment of the Escrow Account**

71. Prior to disbursement of the Fair Fund, the Distribution Agent will establish accounts described as follows at a U.S. commercial bank (“Bank”), not unacceptable to

Commission staff. The Distribution Agent will establish an escrow account (the “Escrow Account”) pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by Commission staff. The Escrow Account will be established to receive the monies from the Commission and the Fair Fund will be held in the Escrow Account until the time of distribution. The Distribution Agent will also establish a separate deposit account (*e.g.*, controlled distribution account, managed distribution account, linked checking, and investment account) (the “Distribution Account”) for the purpose of funding the Distribution Payments to be distributed to Eligible Claimants. The accounts shall be in the name of and bearing the Employer Identification Number of the Fair Fund as custodian for the distributees of the Distribution Plan. The name of each account will be in the following form: “SEC v. China Energy Fair Fund, as custodian for the benefit of investors allocated a distribution pursuant to the China Energy Distribution Plan.”

72. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term United States (“U.S.”) Treasury securities backed by the full faith and credit of the U.S. Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants and tax obligations that may accrue. This may include investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or investments in money market mutual funds registered under the Investment Company Act of 1940 that directly invest 100% of their assets in direct obligations of the United States government.

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

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

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

#### **V. Distribution**

76. The Fair Fund will be distributed to Eligible Claimants as provided under the terms of this Distribution Plan. An Eligible Claimant’s Recognized Claim, as determined in accordance with the Plan of Allocation contained in Exhibit A to this Distribution Plan, will be used to determine the amount of their Distribution Payment.

77. Should the total amount of the Recognized Claims of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro-rata* distribution formula. No Distribution Payment will be made to an otherwise Eligible Claimant unless the *pro rata* amount to be paid equals or exceeds the Minimum Distribution Amount.

78. Checks will be issued by the Distribution Agent from the Distribution Account set up at the Bank. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of issuance. Accordingly, checks that are not negotiated within this Check-cashing Period will be voided, and the issuing financial institution will be instructed to stop payment on those checks, except as provided in paragraphs 83 – 85 below. Where an Eligible Claimant's check is not negotiated within the Check-cashing Period and has been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such funds will remain in the Fair Fund.

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

- a. A statement characterizing the distribution;
- b. A statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued;
- c. A statement that reissued checks will expire on sixty (60) days from the date of the reissued check;
- d. A statement that the prejudgment interest component of the distribution constitutes interest income and that Eligible Claimants will receive a Form 1099 with respect to the prejudgment interest component if their prejudgment interest totals \$600 or more;
- e. A statement that the tax treatment of the distribution is the responsibility of each Eligible Claimant and that the Eligible Claimant should consult his or her tax advisor for advice regarding the tax treatment of the distribution; and
- f. Contact information for the Distribution Agent for questions regarding the Distribution Payment.

80. Distribution checks and/or accompanying communications will clearly indicate that the money is being distributed from a Fair Fund established to compensate investors for harm suffered as a result of their investment in China Energy. Any such communication, letter, or other mailing to Eligible Claimants characterizing the distribution will be submitted to the Commission staff and the Tax Administrator for review and approval.

81. Wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments to Eligible Claimants. Wire transfers will be initiated by the Distribution Agent using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Distribution Agent's senior staff. Wire transfers will be executed in U.S. dollars, unless otherwise agreed to with the Commission staff.

82. The submission of the Proof of Claim Form and the receipt and acceptance of a Distribution Payment 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, Defendants' or Relief Defendants' past or present directors, officers, employees, promoters, agents, advisers, Affiliates, nominees, assigns, creditors, or controlled entities.

## **VI. Post Distribution**

### **A. Handling of Returned or Un-cashed Checks**

83. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void sixty (60) days from the reissuance.

84. The Distribution Agent will research and attempt to locate all Eligible Claimants whose checks are returned to the Distribution Agent as undeliverable. However, the Eligible

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

85. To the extent that an Eligible Claimant, his or her representative, heir, successor, 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 consider such request upon receipt of a written request and documentation, which the Distribution Agent, in its sole discretion, deems appropriate to substantiate the request.

B. Residual Funds

86. If after consultation with Commission staff, the Distribution Agent determines a second distribution is not deemed feasible, the remaining funds shall be returned to the Commission for transfer to the U.S. Treasury.

**VII. The Distribution Agent**

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

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

88. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fair Fund, provided such Institutions are not excluded pursuant to other provisions of this Distribution



Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

89. The Distribution Agent will be entitled to reasonable administrative fees and expenses in connection with the administration and distribution of the Fair Fund, which shall be paid from the Fair Fund, upon Court approval (including any such fees and expenses incurred by agents, consultants or third-parties retained by the Distribution Agent in furtherance of its duties). The Distribution Agent will invoice all fees and expenses for the administration and distribution of the Fair Fund on a quarterly basis directly to Commission staff.

90. 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. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Fair Fund, such Eligible Claimant will be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and shall be barred from prosecuting or asserting any such claims.

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

92 The Distribution Agent will retain all claim materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and thereafter will transfer the documents to the Commission. In addition, the Distribution Agent will shut down the website, P.O. Box, and customer service telephone line(s) established specifically for the administration of the Fair Fund three (3) months after the closing of the Escrow and Distribution Accounts, or at such earlier time as the Distribution Agent determines is appropriate, with the concurrence of the Commission staff.

### **VIII. Tax Compliance**

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

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

94 All taxes, BFS fees, and the reasonable fees and expenses of the Tax Administrator incurred in the performance of its duties, will be paid by the Fair Fund, subject to the review and approval of the Commission staff and the Court.

95. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA").

**IX. Fair Fund Reporting and Accounting**

96. The Distribution Agent will provide to Commission staff, who shall file with the Court, a quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and will provide additional reports and quarterly account statements within thirty (30) days after the end of every quarter, and a final report when its duties are completed.

97. Once the distribution funds have been transferred to the Escrow Account, a quarterly account statement, in a format to be provided by the Commission staff, shall be submitted with the status report by the Distribution Agent.

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

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

99. The Distribution Agent will prepare a final report and final accounting, for Court approval, in a format to be provided by the Commission staff, when the Fair Fund administration is

complete. In compiling the final accounting, the Distribution Agent will coordinate with the Tax Administrator. 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.

**X. Termination of the Fair Fund**

100. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after each of the following has occurred:

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

101. Once the Fair Fund has been terminated, no further claims will be allowed and no additional payments will be made whatsoever.

**XI. Other Rights and Powers**

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

# EXHIBIT A

## PLAN OF ALLOCATION

1. To Receive a Distribution Payment from the Fair Fund, a Potentially Eligible Claimant MUST:
  - a) Have purchased Eligible Securities, defined as China Energy Savings Technology, Inc. common shares (“China Energy”, ticker CESV) purchased on the open market in the United States during the Recovery Period, defined as July 1, 2004 to February 15, 2006, inclusive of both dates;
  - b) Have sold Eligible Securities at a loss on or after February 14, 2006 or held Eligible Securities as of the Close of Trading on December 6, 2006;
  - c) Complete and sign a Proof of Claim Form and supply all required documentation; and
  - d) Submit the completed Proof of Claim Form and required documentation so that it is postmarked by (or received by the Distribution Agent if not sent by U.S. Mail) on or before the Claims Bar Date.
  
2. Each Proof of Claim Form must separately set forth:
  - a) The Potentially Eligible Claimant’s position in China Energy common stock as of the Close of Trading on June 30, 2004, the day before the Recovery Period;
  - b) Each transaction in China Energy common stock, i.e., purchase or sale including date, price and number of shares, China Energy made from July 1, 2004 through and including December 6, 2006; and
  - c) The Potentially Eligible Claimant’s position in China Energy common stock as of the Close of Trading on December 6, 2006.

## **CALCULATION OF RECOGNIZED LOSS PER SHARE**

3. Based on the formula set forth below, the Recognized Loss per Share shall be calculated for each China Energy common stock transaction listed on the Proof of Claim Form and for which adequate documentation is provided. In the calculations below, losses will be recorded as positive amounts and gains will be recorded as negative amounts.
  
4. For shares of China Energy common stock not purchased in the Recovery Period, the Recognized Loss per Share is \$0.00.
  
5. If any of the formulas set forth below yield an amount less than \$0.00, the Recognized Loss per Share is \$0.00.
  
6. Recognized Loss per Share shall be calculated as follows for each share of China Energy common stock:

- a. For each share purchased between July 1, 2004 and February 13, 2006, both dates inclusive, the Recognized Loss per Share shall be:
    - i. If sold before or on February 13, 2006, the Recognized Loss per Share for each such share shall be \$0.00.
    - ii. If sold on February 14 or 15, 2006, the Recognized Loss per Share shall be the lesser of (i) the actual purchase price of each such share minus the actual sale price; or (ii) \$1.00 per share.
    - iii. If sold on or after February 16, 2006, and before or on December 6, 2006, the Recognized Loss per Share shall be the lesser of (i) the actual purchase price of each such share minus the actual sale price; or (ii) \$7.10 per share.
    - iv. If sold or still held after December 6, 2006, the Recognized Loss per Share shall be the lesser of (i) the actual purchase price of each such share minus \$0.01; or (ii) \$7.10 per share.
  - b. For each share purchased on February 14 or 15, 2006, the Recognized Loss per Share shall be:
    - i. If sold on February 14 or 15, 2006, the Recognized Loss per Share shall be \$0.00 per share.
    - ii. If sold on or after February 16, 2006, before or on December 6, 2006, the Recognized Loss per Share shall be the lesser of (i) the actual purchase price of each such share minus the actual sale price; or (ii) \$6.10 per share.
    - iii. If sold or still held after December 6, 2006, the Recognized Loss per Share shall be the lesser of (i) the actual purchase price of each such share minus \$0.01; or (ii) \$6.10 per share.
7. FIFO Methodology: For Potentially Eligible Claimants who held China Energy common stock before the beginning of the Recovery Period and/or made multiple purchases, acquisitions or sales during the Recovery Period, the first-in first out (“FIFO”) method will be applied to such transactions for purposes of calculating a Recognized Loss per Share. Sales of shares will be matched in chronological order first against the closing position the day before the beginning of the Recovery Period, until that day’s closing position has been exhausted; then remaining sales after the beginning of the Recovery Period will be matched in chronological order against purchases or acquisitions made in the Recovery Period until all such shares have been exhausted.

#### **COMPUTATION OF RECOGNIZED CLAIM AND DISTRIBUTION PAYMENT**

8. A Potentially Eligible Claimant will be eligible to receive a Distribution Payment from the Net Available Fair Fund only if the Potentially Eligible Claimant had a net market loss. A market loss will be calculated as the difference between the purchase price per share and the sale price per share. If shares were retained at the close of trading on December 6, 2006, they will be assigned a sale value of \$0.01 per share for the purposes of market loss calculation. All market

gains and market losses will be combined and thereafter netted against each other. In calculating the net market loss, the market loss (or gain) for all transactions in China Energy common stock within the Recovery Period will be summed. If an investor has an overall net market gain, or a net market loss equal to zero, the Potentially Eligible Claimant will not be eligible to receive a Distribution Payment from the Net Available Fund.

9. An Eligible Claimant's Recognized Claim shall be calculated as the sum of the Recognized Loss per Share, as calculated above, across all of his, her, or its China Energy common stock transactions.
10. To the extent that a Potentially Eligible Claimant suffered an overall actual market loss on his, her, or its transactions in China Energy common stock during the Recovery Period, but that actual market loss was less than the Recognized Claim calculated above, then the Recognized Claim shall be limited to the amount of the actual market loss.
11. To the extent there are sufficient funds in the Net Available Fair Fund, each Eligible Claimant shall be allocated a Distribution Payment equal to his, her or its Recognized Claim, subject to the minimum distribution provision in paragraph 13. In no event will an Eligible Claimant receive a Distribution Payment exceeding his, her or its Recognized Claim.
12. Should the sum of Recognized Claims of all Eligible Claimants exceed the Net Available Fair Fund, the Distribution Agent will distribute funds to Eligible Claimants based upon a *pro rata* distribution formula. Each Eligible Claimant's *Pro-Rata* Share of the Net Available Fair Fund will be calculated as the Eligible Claimant's Recognized Claim divided by the sum of Recognized Claims of all Eligible Claimants. The Distribution Payment will be calculated as the Eligible Claimant's *Pro-Rata* Share multiplied by the Net Available Fair Fund, subject to the minimum distribution provision in paragraph 13.
13. If an Eligible Claimant has a calculated Distribution Payment that is less than the Minimum Distribution Amount that Eligible Claimant will not receive a distribution. The Net Available Fair Fund will be distributed to other Eligible Claimants whose Distribution Payments are greater than the Minimum Distribution Amount.

### **GENERAL PROVISIONS**

14. All prices mentioned in the calculations exclude all fees and commissions. Purchases and sales of China Energy common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.
15. Short Sales: In the event that a claimant has an opening short position in China Energy common stock, the earliest Recovery Period purchases or acquisitions shall be matched against such



opening short position, and not entitled to a recovery and will not contribute to a market gain or loss, until that short position is fully covered. Any gains from short selling shall offset any losses on other transactions. Any losses from short selling will have a Recognized Loss per Share of \$0.00. The date of a short sale is deemed to be the date of sale of China Energy common stock. The date of covering a short sale is deemed to be the date of purchase or acquisition of the China Energy common stock.