

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIDGE PREMIUM FINANCE, LLC (f/k/a
BERJAC OF COLORADO, LLC),
MICHAEL J. TURNOCK, and
WILLIAM P. SULLIVAN, II,

Defendants,

and

JANE K. TURNOCK,

Relief Defendant.

Civil Action No.
1:12-cv-02131

PROPOSED DISTRIBUTION PLAN

I. BACKGROUND

1. On August 14, 2012, the United States Securities and Exchange Commission (“SEC” or “Commission”) filed a complaint against Bridge Premium Finance, LLC (“BPF”), Michael J. Turnock (“Turnock”), and William P. Sullivan, II (“Sullivan”) (collectively, “Defendants”), alleging that Defendants engaged in a Ponzi scheme from at least 2002.

2. From approximately 1996 through 2012, BPF raised at least \$15.7 million from more than 120 investors in multiple states through an unregistered offering of promissory notes. Defendants portrayed the investments in promissory notes as safe, conservative investments comparable to money market accounts and certificates of deposit, but offering higher rates of interest, up to 12% annually. BPF purportedly earned enough interest on its premium financing loans to its clients in order to pay the rates of interest it promised to its promissory note investors. In reality, from at

least 2002, BPF operated a Ponzi scheme. Since that time, BPF did not earn sufficient returns from its insurance premium financing business from which to pay interest and redemptions to investors. Instead, BPF paid quarterly interest payments and redemptions to existing investors with money raised from other investors. After more than a decade of Ponzi payments and operational losses, by May 2012, BPF owed investors more than \$6.2 million, yet its insurance premium loan portfolio totaled less than \$250,000, and it had total assets of less than \$500,000.

3. On March 11, 2013, the Commission obtained a final judgment as to BPF (Dkt. #64) and Turnock (Dkt. #65). The Court ordered that BPF was liable for disgorgement of \$6,289,306, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$15,723, jointly and severally with Turnock. BPF and Turnock were each also liable for a civil penalty in the amount of \$6,289,306.

4. The SEC has received disgorgement of \$546,298 (disgorgement of Jane Turnock of \$361,372, disgorgement of Bridge Premium Finance and Michael Turnock of \$184,925) and post-judgment interest of \$4,690 from Bridge Premium Finance and Michael Turnock. The post-judgment interest is to be sent to the United States Treasury and is not available for distribution. Prior to deducting taxes, fees, and expenses of the tax administrator and fees and expenses of the distribution agent, there is approximately \$546,298 available for distribution. The staff may receive some additional money, but it is unlikely to exceed \$100,000.

5. On August 22, 2014 the Court appointed Damasco & Associates LLP as the tax administrator (“Tax Administrator”) to execute all the tax reporting and filing requirements for the distribution fund (Dkt. #97).

6. On April 24, 2015, the Commission obtained an amended final judgment against

Sullivan (Dkt. #106). Sullivan was held liable for disgorgement of \$70,912.31, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$5,122.27, and a civil penalty in the amount of \$150,000.

7. On May 7, 2015, the Court appointed Gilardi & Co. LLC (“Gilardi”) as Distribution Agent (“Distribution Agent”), to assist in overseeing the administration and distribution of the distribution fund in coordination with Commission staff, pursuant to the terms of the Distribution Plan (“Distribution Plan”) (Dkt. #110). The Commission now respectfully moves the Court for an order approving the proposed Distribution Plan.

Allocation of the Distribution Fund

8. The Distribution Agent shall oversee the administration of the procedures and distribution as provided in this Distribution Plan. The Distribution Agent shall make determinations under the criteria established herein as to the eligibility of injured investors to recover monies and the amount of money to be distributed from the Distribution Fund to each injured investor.

9. The Distribution Agent recommends that the funds available for distribution (“Distribution Fund”) be allocated to all eligible investors according to the losses incurred by those eligible investors who lost money in the Ponzi scheme.

10. Because the Distribution Fund is not sufficient to permit payment of the total investment of each investor, each eligible investor will be paid the percentage of the Distribution Fund that each eligible investor’s loss bears to the total of the losses of all eligible investors – thus, the investor’s *pro rata* share of the Distribution Fund.

11. Any portion of the reserve that remains unused after termination of this matter will be paid to the Commission for transfer to the United States Treasury.

12. Investors who were able to withdraw money in amounts greater to or equal to their investment are not eligible for a *pro rata* share of the Distribution Fund as they were not harmed.

13. Defendants, relief defendant Jane K. Turnock and the minor children (at the time of their initial investment in BPF) of any Defendant or Jane K. Turnock will not be considered eligible investors entitled to a *pro rata* share of the distribution fund regardless of whether they lost money in the Ponzi scheme.

14. Eligible third-party investors¹ and eligible related-party investors² will be treated equally in the determination of their *pro rata* share.

Identifying Injured Investors

15. To identify potential injured investors, the Commission obtained and analyzed records provided by various parties including (a) Bridge Premium Finance; (b) Michael J. Turnock; and (c) William P. Sullivan, II.

16. The Commission identified 108 unique third-party investors, and 20 unique related-party investors who invested in the Ponzi scheme. Of the 108 unique third-party investors, 44 were found to have suffered harm and thus eligible for a *pro rata* share of the Distribution Fund. Of the 20 unique related-party investors, 11 were found to have lost money. Of those 11, three were Relief Defendant Jane K. Turnock or a minor child (at the time of their initial investment in BPF) of Defendant Michael J. Turnock (Adrienne Turnock and Christian Turnock). Accordingly, a total of 8 related-party investors were found eligible for a *pro rata* share of the distribution fund.

Plan of Allocation - Detailed Methodology for Allocating Distribution Fund

17. The Distribution Fund will be distributed equitably on a *pro rata* basis among eligible

¹ Third-party investors are individual eligible investors who do not have the surname Turnock or Kendall.

² Related-party investors are individuals who are related to Defendant Michael Turnock and/or Relief Defendant Jane Kendall Turnock and have the surname of Turnock or Kendall.

investors (“Eligible Investors”), whether they are third-party investors or related-party investors.

18. To identify Eligible Investors, the following calculation was made:

- a. Initial deposit plus other deposits minus withdrawals minus interest paid in cash.
 - i. If the calculation results in a positive number, that number is considered harm (“Harm”) suffered by the investor. The third-party investor is eligible for a *pro rata* share of the distribution funds.
 - ii. If calculation results in zero or a negative number, the Harm is considered to be zero and that third-party investor is not eligible for a *pro rata* share of the distribution funds.

19. The total Harm will be calculated by adding up all the Harm suffered by the Eligible Investors.

20. An investor’s *pro rata* share will be calculated by dividing each investor’s Harm by the total Harm.

21. An investor’s *pro rata* share of the Distribution Fund will be calculated by multiplying the investor’s *pro rata* share by the total amount of funds available for distribution.

No Claims Process.

22. This Commission has identified 52 Eligible Investors who suffered Harm. Because the investor information obtained from various sources was consistent and has been validated, the Distribution Agent does not think it necessary to have a claims process to try and identify additional investors.

23. The Distribution Agent and the Commission agree that treating eligible third-party investors and eligible related-party investors equally is the most equitable way to determine the allocation distributed from the Distribution Fund to the investors.

Notice to Investors and Opportunity to Object

24. Upon granting of the Motion for Order Approving Distribution Plan, the Distribution Agent will provide notice, an investment summary document and a copy of the proposed Distribution Plan to all 52 Eligible Investors containing (a) instructions for serving on the Distribution Agent any objections to the Distribution Plan; (b) notice of the time period allotted for the opportunity to object to the Distribution Plan; (c) notice of instructions for disputing investment summary and allotted time to dispute and (d) instructions for receiving payment via wire. The Distribution Agent will also provide notice, an investment summary document and copy of the proposed Distribution Plan to 76 non-injured investors, informing those non-injured investors that they are not entitled to a Distribution, unless those non-injured investors provide supporting documentation demonstrating that they were harmed.

25. Investors will be directed to submit any objections to the Distribution Agent and instructed not to contact the Commission, the Court, or the Clerk of the Court. The Distribution Agent will notify the Commission immediately upon receipt of any objections so that such objections may be addressed timely and efficiently.

26. Any dispute asserted by investors shall be in writing and shall provide adequate documentary evidence to substantiate the dispute, including all documentary evidence that the Distribution Agent deems necessary or appropriate including, but not limited to, if available, account statements and proofs of investment.

27. After the time periods allotted for submitting objections and disputes has passed:

- a. If objections and/or disputes were received, the Distribution Agent will work with the Commission to prepare and file with the Court a summary of said objections and recommendations with regard to the same.

b. If *no* objections and/or disputes were received, the Distribution Agent will notify the Court of the same and will request that the Court approve the proposed Distribution Plan.

28. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make non-material adjustments or clarifications to the Distribution Plan that are consistent with the purpose and scope of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission. If a change is deemed material by Commission staff, Court approval is required.

29. Upon receipt of an Order signed by the Court, the Distribution Agent will coordinate the disbursement of funds to approved investors in the amounts set forth in the Distribution Plan and the exhibit attached thereto.

30. Upon receipt and acceptance by an injured investor of a payment from the net Distribution Fund, such injured investor shall be deemed to have released all claims that such injured investor may have against the Distribution Fund, the Distribution Agent and its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

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

32. All checks presented for payment or electronic transfers will be subject to “positive pay”

controls before being honored by the bank, and all such checks issued to injured investors by the Distribution Agent shall bear a stale date of sixty (60) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an injured investor's check has not been negotiated within the sixty (60) day period and has been voided by the Distribution Agent, that injured investor's claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the Distribution Fund and subject to re-allocation.

33. Approximately six (6) months following initial distribution, after all applicable taxes of the net Distribution Fund have been satisfied, if there are remaining funds, whether by reason of tax refunds, uncashed checks or otherwise, the Distribution Agent recommends that such funds be re-allocated to those injured investors, if any, who cashed their initial distribution check. Under no circumstances shall an injured investor be distributed funds greater than their overall Harm.

34. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make non-material adjustments or clarifications to the Distribution Plan that are consistent with the purpose and scope of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission. If a change is deemed material by Commission staff, Court approval is required prior to implementation by amending the Distribution Plan.

35. Defendants, Relief Defendants and the minor children (at the time of their initial investment in BPF) of any Defendant will not be eligible for a distribution from the Distribution Fund.

Administration of the Plan

Control of the Distribution Fund

36. In order to disburse the Distribution Fund, the Distribution Agent will compile and submit a list of payees (including payee names and addresses) and payment amounts to the Commission staff no later than sixty (60) days after the Distribution Agent has used its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all eligible investors. The Distribution Agent shall provide the final payee list to the Commission staff, and upon receipt and acceptance, the Commission staff shall petition the Court to transfer all funds from the SEC to the Distribution Agent for distribution pursuant to the Distribution Plan.

37. Following the Court's approval of the Commission's petition for the authority to distribute the funds from the Distribution Fund as provided in the Distribution Plan, the Distribution Agent shall commence the distributions to all Eligible Investors as promptly as possible following the transfer of the funds. In conjunction with the motion seeking transfer of funds from the SEC to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

38. Upon receipt of the monies from the SEC in this matter, the Distribution Agent shall supply a copy of the receipt to counsel for the Commission in this matter within ten (10) business days of the receipt of the monies in a bank account as described below:

- a. The bank account will be maintained at a United States commercial bank ("Bank") that is well-capitalized ("Well-Capitalized"), as defined by the Federal Reserve Act Subpart D, 12 C.F.R. 208.43, and is to be proposed by the Distribution Agent and not be unacceptable to the staff of the Commission. In the

event that the Bank's Well-Capitalized status changes, the Distribution Agent will promptly inform the SEC staff of such change in status;

- b. Pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, the Distribution Agent shall establish an escrow account (the "QSF Account") in the name of SEC v. Bridge Premium Distribution Fund, and bearing the Employer Identification Number ("EIN") of the Qualified Settlement Fund ("QSF"), as custodian for the distributees of the Distribution Fund. The name of the account shall be in the following form: QSF, SEC v. Bridge Premium Distribution Fund, bearing its EIN Number, as custodian for the benefit of investors allocated a distribution from the Bridge Premium Distribution Fund;
- c. The Distribution Agent shall also establish a separate deposit account ("Controlled Distribution Account") for the purpose of funding checks to be distributed to investors by the Distribution Agent pursuant to the Distribution Plan. The Controlled Distribution Account shall bear the name of the QSF, SEC v. Bridge Premium Distribution Fund, bearing its EIN Number, as QSF, SEC v. Bridge Premium Distribution Fund, bearing its EIN Number, as custodian for the benefit of investors allocated a distribution from the Bridge Premium Distribution Fund;
- d. Any funds in the QSF Account, if invested, shall be invested in instruments backed by the full faith and credit of the United States Government, including a AAA-rated United States Treasury money market fund that directly invests 100% in short term United States Treasury securities and obligations, provided however,

that the money market mutual funds' investments in short term United States Treasury securities will not be made through repurchase agreements or other derivative products;

- e. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

39. All Distribution Fund checks presented for payment or electronic transfers will be subject to "positive pay" controls before being honored by the Bank. The positive pay system provides protection against fraud arising from counterfeit or amount-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 payment of the presented obligation. In each instance, funds will be transferred from the QSF Account to the Distribution Account on the Bank's confirmation that a presented check matches the relevant pay criteria.

40. The Distribution Agent shall use its best efforts to make use of all reasonable commercially available resources and other reasonably appropriate means to locate all Eligible Investors whose checks are returned to the Distribution Agent as undeliverable by the U.S. Postal Service. However, the Eligible Investor has the burden of providing the Distribution Agent with any changes to his or her mailing address.

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

- a. A statement characterizing the distribution;

- b. A statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution;
- c. A statement that checks will be void after sixty (60) days after the date of issuance; and,
- d. The name of a person or entity to contact, if the Eligible Distribution Fund Recipient has any questions regarding the distribution.

42. Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Distribution Fund checks, on their face or the accompanying mailing, shall clearly indicate that the money is being distributed from a Distribution Fund established by the Commission to compensate investors for harm as a result of securities law violations by defendants.

43. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any person in connection with a distribution made in accordance with the list of all Eligible Investors and their eligible distribution amount as approved by the Court, and all persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Investor of a distribution from the Distribution Fund, such Eligible Investor shall be deemed to have released all claims that such Eligible Investor may have against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

Wind Down of Distribution

44. The Distribution Agent will maintain all documents, including documents in any media, six (6) years after approval of the final accounting and thereafter will transfer the documents to the Commission, pursuant to Commission direction.

45. Once all of the distribution payments and payments for fees and costs have been cashed or voided, any remaining funds will be paid to the Commission for transfer to the United States Treasury.

46. No further claims shall be made against the Distribution Fund beyond the amount allocated to Eligible Investors. Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever.

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

- a. The final accounting has been submitted and approved by the Court;
- b. All tax returns have been filed;
- c. All taxes, fees and expenses have been paid; and
- d. All remaining funds have been paid to the Commission for transfer to the United States Treasury.

Taxes

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

Payment of Costs, Fees, and Taxes, and Filing of Reports

49. All taxes and the reasonable costs and fees of the Distribution Agent, Tax

Administrator, third-party professionals and service providers incurred in the performance of their duties, will be paid from the Distribution Fund, subject to the review and approval of the Court.

50. The Distribution Agent will provide Commission staff with a progress report within twenty (20) days after the end of each quarter and a final report with a final accounting once the distribution is complete. The final report will be submitted by the Distribution Agent to the Court.

51. Progress reports shall inform the Commission of the activities and status of the Distribution Fund during the requested reporting period, and shall specify, at a minimum, the location of the account(s) comprising the Distribution Fund, the value of those account(s), all monies earned or received into the account(s), monies distributed to claimants under the Distribution Plan, and any monies expended to satisfy fees, costs, taxes and other expenses incurred.

52. 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, and a request for approval of any unpaid fees and costs. The final accounting will be in a format provided by Commission staff.

Timeline

53. The Distribution Agent's timeline for executing the Distribution Plan and making final distributions is attached at Exhibit "A". The timeline set forth at Exhibit "A" is based on the assumption that investor objections, if any, will not raise extraordinary issues not contemplated by the Distribution Agent at this time and that the Court provides the requested approval as anticipated.

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

Other Rights and Powers

55. 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 him 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.

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

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

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

EXHIBIT “A”

DISTRIBUTION FUND

**TIMELINE FOR APPROVAL AND IMPLEMENTATION
OF A DISTRIBUTION PLAN**

Description of Event	Anticipated Completion Date
Mailing of notice to known addresses and a copy of the proposed Distribution Plan to investors with instructions for submitting objections and preferred method of payment	7 days after proposed Distribution Plan is approved
Deadline for submitting objections and/or disputes to the Distribution Agent	30 days after above notice is mailed
Filing of summary of objections and/or disputes and corresponding recommendations OR notice of no objections and/or disputes	30 days after deadline for submitting objections
Deadline to disburse funds to approved investors pursuant to the Distribution Plan	15 business days following the receipt of funds
Deadline to issue Distribution Agent’s final report and final accounting to Commission	90 days after final payments are stale