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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 vs.

14 ALEXANDER JAMES TRABULSE,

15 Defendant.

16 and

17 FAHEY FUND, L.P., FAHEY FINANCIAL
18 GROUP, INC., INTERNATIONAL TRADE &
DATA, and ITD TRADING,

19 Relief Defendants.
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Case No. C 07-4975 (WHA)

**NOTICE OF MOTION FOR ORDER
APPROVING DISTRIBUTION PLAN AND
AUTHORIZING INTERIM DISTRIBUTION
TO HOLDERS OF ALLOWED CLAIMS**

Date: October 15, 2009

Time: 8:00 a.m.

Place: Courtroom 9, 19th Floor
United States District Court
Northern District of California-
San Francisco Division
450 Golden Gate Avenue
San Francisco, CA 94102

1 PLEASE TAKE NOTICE THAT Michael A. Grassmueck, the Court-appointed corporate
2 monitor (the "Monitor") with regard to the Fahey Fund, L.P.; Fahey Financial Group, Inc.;
3 International Trade & Data; and ITD Trading (collectively, the "Relief Defendants") and
4 Alexander James Trabulse ("Trabulse"), has submitted a Motion for Order Approving Distribution
5 Plan and Authorizing Interim Distribution to Holders of Allowed Claims (the "Motion").

6 On December 17, 2007, this Court entered the Order Appointing Monitor And Other
7 Ancillary Relief ("Monitor Order"), which authorized the appointment of Michael A. Grassmueck,
8 as corporate monitor (the "Monitor") with regard to the Relief Defendants and Trabulse. Pursuant
9 to the Monitor Order, the Monitor was empowered and directed to, among other things, conduct
10 such investigation as would be necessary to locate and account for the Relief Defendants' assets,
11 and review the overall operation of the Relief Defendants in accordance with the Monitor Order.

12 On February 13, 2008, the Court entered an Order implementing certain recommendations
13 of the Monitor, and which also incorporated the terms of the Monitor Order (the "Modified
14 Order"). The Modified Order authorized the Monitor to, among other things, determine the
15 disallowance and allowance of claims, through a claims review process, and assist in the sale and
16 liquidation of assets. The Modified Order further provided for the Monitor to distribute the
17 recovered funds to investors. *See* Modified Order, Section 1, lines 13 to 14 ("The Parties
18 anticipate that all assets of Relief Defendants will be liquidated as part of the settlement of this
19 action and the funds distributed to the investors.").

20 After completing the claims review process, the Monitor filed an Omnibus Motion to seek
21 approval of objections to certain claims filed in this case, and the approval of the allowance and
22 disallowance, as applicable, of those claims. The Court entered an order approving the Omnibus
23 Motion on September 2, 2009. In accordance with the foregoing orders, the Monitor now seeks
24 approval of a distribution plan and interim distribution.

25 Based on the Monitor's calculations, the Monitor estimates a distribution return for
26 investors and creditors of 37.72% on their allowed claims (the "Distribution Return"). The
27 Receiver estimates that additional proceeds may be eventually realized from sales occurring
28 following the filing of this Motion. It should be noted that this Distribution Return includes

1 \$250,001 which constitutes funds obtained from a disgorgement and civil penalty judgment
 2 against Trabulse in this proceeding, entered on April 7, 2008 ("Trabulse Judgment"). These funds
 3 were earmarked for distribution to investors only pursuant to the establishment of a Fair Fund
 4 under Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Funds"). The Fair Funds are not
 5 subject to reduction for payment of any administrative fees and expenses of the Relief Defendants'
 6 estate ("Estate"). The Clerk of this Court has received and deposited the Fair Funds in an interest-
 7 bearing account with the Court Registry Investment System ("CRIS Account"), and they are held
 8 in such CRIS Account pending further Court order. Pursuant to the Trabulse Judgment, the
 9 Monitor seeks release of the Fair Funds from the CRIS Account for distribution of such Fair
 10 Funds under a plan of distribution.

11 The Monitor currently holds approximately \$5,069,537.52 in cash for the Distribution
 12 Return. This amount of the Distribution Return is exclusive of a holdback for payment of
 13 remaining and estimated administrative fees and expenses of \$250,000 ("Hold-Back Funds"). Any
 14 unapplied Hold-Back Funds will be included in any final distribution of Estate funds. To
 15 implement the distribution of the Distribution Return and the Fair Funds, the Monitor has prepared
 16 a Distribution Plan, which is concurrently filed herewith. The Monitor seeks approval of the
 17 Distribution Plan and the release of the Fair Funds from the CRIS Account.

18 In general, the Distribution Plan contemplates distributions for three types of allowed
 19 claims against the Estate: (i) Administrative Claims¹, comprised primarily of the expenses
 20 incurred by the Monitor and his professionals, (ii) Creditor Claims, comprised of claims of any
 21 vendors or service providers for goods and services rendered to the Estate, and (iii) Investor
 22 Claims, comprised of claims held by persons or entities who invested funds in the Estate.

23 The Monitor proposes to pay Creditor Claims and Investor Claims that are determined to
 24 be Allowed Claims *pro rata* from the Estate Proceeds. The Monitor proposes that Administrative
 25 Claims, after Court approval, will be paid in full, out of the Hold-Back Funds. The Monitor
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28 ¹ All capitalized terms not defined herein shall have the same meanings as set forth in the
 Distribution Plan.

1 estimates that the remaining Monitor's fees and costs, and those of his professionals, owing
2 through the close of the case, will be approximately the amount of the Hold-Back Funds.

3 The Monitor will make the first interim distribution under the Distribution Plan as soon as
4 practicable, but no later than sixty (60) days after a Final Order is entered by the Court approving
5 the Distribution Plan. Subsequent interim distributions will be made when material amounts are
6 available to distribute subject to Court order. Further, when and if appropriate, the Monitor will
7 make a final distribution and close the case subject to Court order. Any distribution under the
8 Distribution Plan which is unclaimed after ninety (90) days following the date of distribution shall
9 be forfeited, and such distribution together with all interest earned thereon shall become part of,
10 and increase the amount of, the Hold-Back Funds.

11 PLEASE TAKE FURTHER NOTICE that the Motion will be served concurrently with
12 this Notice, and otherwise copies of the Motion can also be obtained from or viewed at the Clerk
13 of the Court, U.S. District Court, Northern District of California, San Francisco Division, 450
14 Golden Gate Avenue, San Francisco, CA 94102, or by contacting counsel to the Monitor at the
15 above-referenced address.

16 PLEASE TAKE FURTHER NOTICE any objecting party may file a response not later
17 than twenty-one (21) days prior to the hearing date, pursuant to Local Rule 7-3. Failure to file a
18 response may be deemed as a waiver of any opposition to the Motion.

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Dated: September 9, 2009

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