

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

BROADWIND ENERGY, INC.,  
J. CAMERON DRECOLL; and  
STEPHANIE K. KUSHNER,

Defendants.

Case No. 1:15-cv-01142

Hon. Charles R. Norgle, Sr.

**[PROPOSED] DISTRIBUTION PLAN**

**I. Introduction**

1. On February 5, 2015, the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) filed a Complaint against Broadwind Energy, Inc. (“Broadwind”), J. Cameron Drecoll (“Drecoll”), and Stephanie K. Kushner (“Kushner”) (collectively, the “Defendants”). The SEC alleged accounting and disclosure securities law violations arising from Broadwind’s failure to record and disclose a \$58 million impairment charge for intangible assets prior to a public offering in January 2010. (*Dkt No. 1*).

2. On February 11, 2015, the Court entered final judgments against all of the Defendants, ordering them, in the aggregate, to pay disgorgement of \$495,000.00 plus prejudgment interest of \$71,467.00 and civil penalties of \$1,125,000.00, for a total of \$1,691,467.00. (*Dkt Nos. 18-20*). The Defendants have paid the full amounts ordered by the Court, which is deposited in an interest-bearing account at the U.S. Treasury’s Bureau of Fiscal Service (“BFS”). Each of the final judgments provides that the SEC may propose a plan to

distribute the collected funds subject to the Court’s approval that the plan may provide for a distribution pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002 (“SOX”), and that the Court shall retain jurisdiction over the administration of any distribution of the Fund. (*Dkt Nos. 18-20*).

3. On February 20, 2020, this Court established a Fair Fund, pursuant to Section 308(a) of SOX consisting of the \$1,691,467.00 paid by the Defendants, along with any accrued interest and earnings thereon (the “Fair Fund”), and appointed Miller Kaplan Arase LLP as tax administrator (“Tax Administrator”) to fulfill the tax obligations of the Fair Fund (“MKA Appointment Order”). (*Dkt No. 30*).

4. On February 20, 2020, this Court also appointed Analytics Consulting LLC as the distribution agent (“Analytics” or “Distribution Agent”) for the Fair Fund to assist in overseeing the administration and the distribution of the Fair Fund in coordination with SEC staff, pursuant to the terms of a distribution plan to be approved by this Court. (*Dkt No. 31*).

5. This Distribution Plan (the “Plan”) was developed jointly by the Distribution Agent and the SEC staff in accordance with the methods and procedures customary in Fair Fund administrations. This Distribution Plan governs the administration and distribution of the Fair Fund, and sets forth the method and procedures for distributing the assets of the Fair Fund to certain Broadwind investors harmed by the alleged misconduct. The attached Plan of Allocation, sets forth the methodology used to calculate distribution payments to Eligible Claimants (as defined below).

## **II. Defined Terms**

6. In addition to words otherwise defined herein, the following definitions apply to the Plan:

- a. **“Administrative Costs”** means any administrative costs and expenses, including without limitation, the fees and expenses of the Tax Administrator and the Distribution Agent, tax obligations, and investment costs. All Administrative Costs will be paid by the Fair Fund.
- b. **“Claim Form”** means the form, designed by the Distribution Agent and reviewed by SEC staff, for the filing of claims in accordance with the Plan. The Claim Form will require, at a minimum, sufficient documentation of transactions in the Eligible Security such that eligibility under the Plan can be determined, tax identification and related information from the Potential Claimant, as determined necessary by the Distribution Agent in coordination with the Tax Administrator, and a certification that the Potential Claimant is not an Excluded Party.
- c. **“Claims Bar Date”** means the date by which a Proof of Claim Form must be postmarked or received by the Distribution Agent, if not sent by U.S. mail, in order to receive consideration under the Plan. Subject to certain extensions provided for in this Distribution Plan, the Claims Bar Date shall be ninety (90) days after the Distribution Agent’s initial mailing of the Claims Packet.
- d. **“Claims Packet”** shall mean the materials relevant to submitting a claim, provided to Potential Claimants, including Potential Claimants who request such materials through a website or otherwise prior to the Claims Bar Date. The Claims Packet will include, at minimum, a copy of the Plan

Notice and a Claim Form (together with instructions for completion of the Claim Form).

- e. **“Days”** shall mean calendar days, unless specified otherwise.
- f. **“Determination Notice”** shall mean the notice sent by the Distribution Agent within ninety (90) days of the Claims Bar Date to all Potential Claimants that submitted a Claim Form. The Determination Notice will set forth the Distribution Agent’s determination of the eligibility of the claim (eligible, partially or wholly deficient, or ineligible) and the Eligible Loss Amount, if any. The Determination Notice will provide to each Potential Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding further necessary actions. In the event the claim is denied, the Determination Notice will state the reason(s) for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim.
- g. **“Distribution Agent”** means Analytics (collectively with all employees, 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 the Plan.
- h. **“Distribution Payment”** means the payment to an Eligible Claimant in accordance with the Plan.

- i. **“Eligible Claimant”** means a Potential Claimant who is not an Excluded Party and who purchased shares of the Eligible Security during the Relevant Period and whose Eligible Loss Amount in accordance with the Plan, entitles them to a Distribution Payment.
- j. **“Eligible Loss Amount”** means for each Eligible Claimant, the sum of the Recognized Loss per share on each share of the Eligible Security purchased or acquired during the Relevant Period, as defined and calculated in accordance with the Plan of Allocation.
- k. **“Eligible Security”** shall mean Broadwind common stock purchased or acquired during the period March 16, 2009 through March 11, 2010.
- l. **“Excluded Parties”** means the following entities or individuals:
  - i. Any director or officer, past or present, of Broadwind or any of their past or present advisers, agents, affiliate (or any of the nominees, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities of the foregoing) who served in such capacity during the Relevant Period;
  - ii. The Defendants in the captioned action (or any of the Defendant’s advisers, agents, affiliates, nominees, assignees, creditors, heirs, distributees, spouses, parents, children, or controlled entities);
  - iii. The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent; and
  - iv. Any Person who assigned their right to obtain a recovery in the Commission’s action against Defendants; provided, however, that

this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law; or

v. 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 (or any of his or her affiliates, assignees, creditors, heirs, distributees, spouses, parents, children, or controlled entities) 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 Claim Form;

m. **“Fair Fund”** refers to the fund consisting of \$1,691,467.00 established by this Court pursuant to the provisions of Section 308(a) of SOX for the benefit of investors harmed by the Defendant’s misconduct described in the Complaint and paid by the Defendants pursuant to the final judgments. Additional funds collected from the accrued interest and earnings will be added to the Fair Fund in accordance with this Court’s order on February 20, 2020.

n. **“Final Determination Notice”** means the Distribution Agent's written reply to each Potential Claimant who timely responded to the Determination Notice in an effort to cure a deficiency or seek reconsideration of a rejected claim. The Final Determination Notice will

constitute the Distribution Agent's final decision regarding the status of the claim.

- o. **"Market Loss/Gain"** shall mean the market loss or gain that occurs from the trading in the Eligible Security during the Relevant Period.
- p. **"Minimum Distribution Amount"** shall mean the specified dollar amount that a Distribution Payment must equal or exceed in order for a distribution to be made to an Eligible Claimant. No Eligible Claimant shall receive a distribution unless his, her or its Distribution Payment is equal to or greater than \$10.00.
- q. **"Net Fair Fund"** means the Fair Fund, plus accrued interest or earnings, less any Administrative Costs.
- r. **"Payee List"** shall mean a list of Eligible Claimants and the amount of each Eligible Claimant's Recognized Loss and *Pro Rata* Share.
- s. **"Person"** means natural individuals as well as legal entities including, but not limited to, corporations, partnerships, limited liability companies, and governmental entities.
- t. **"Plan Notice"** means the written notice from the Distribution Agent to Potential Claimants informing them of the Fair Fund, the Plan and its eligibility requirements, explaining how to submit a claim, and how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund website. The Distribution Agent, in consultation with the SEC staff, shall design the Plan Notice, consistent with the provisions of the Plan.

- u. **“Plan of Allocation”** means the methodology by which a Potential Claimant’s Eligible Loss Amount is calculated. The Plan of Allocation is set forth in Appendix A and attached hereto.
- v. **“Potential Claimant”** means a Person, or his, her, or its lawful successors, who purchased the Eligible Security during the Relevant Period.
- w. **“*Pro Rata Share*”** is a computation intended to measure Eligible Claimants’ claims against one another. Should the total Eligible Loss Amount of all Eligible Claimants exceed the Net Fair Fund, then each Eligible Claimant will receive a Distribution Payment that their Eligible Loss Amount bears in proportion to the total Eligible Loss Amount of all Eligible Claimants.
- x. **“Recognized Loss”** shall mean the amount of loss on a share of the Eligible Security purchased or acquired during the Relevant Period calculated in accordance with the Plan of Allocation.
- y. **“Relevant Period”** means the period from March 16, 2009 through March 11, 2010, inclusive.
- z. **“Summary Notice”** means the notice published in print or internet media. Such notice (the text of which shall be approved by the SEC staff) shall include, at a minimum, a statement that the Fair Fund was established for the benefit of investors who traded in the Eligible Security during the Relevant Period, the means of submitting a Claim Form, and the Claims Bar Date.

- aa. **“Tax Administrator”** shall mean Miller Kaplan Arase LLP, the Tax Administrator for the Fair Fund appointed by the Court on February 20, 2020.
- bb. **“Third-Party Filer”** means a third-party including, without limitation, a nominee, custodian, or an intermediary holding in street name, who is authorized to, and submits, a claim(s) on behalf of one or more Potential Claimants. Third-Party Filer does not include assignees or purchasers of claims, which are excluded from receiving Distribution Payments. *See* paragraph 6.1(iv) above.

### **III. The Distribution Agent**

7. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants; obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements; advising Potential Claimants of deficiencies in claims and providing an opportunity to cure any documentary defects; taking antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria established herein as to Potential Claimants eligibility; advising Potential Claimants of final claim determinations; and disbursing the Fair Fund in accordance with the Plan.

8. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon consultation and agreement with SEC

staff. If a change is deemed to be material by SEC staff, Court approval is required prior to implementation by amending the Plan.

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

10. The Distribution Agent is authorized to enter into agreements with 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 Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Plan.

11. The Distribution Agent will be entitled to payment from the Fair Fund of reasonable fees and expenses incurred in the performance of its duties (including any such fees and expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance of its duties).

12. The Distribution Agent may be removed 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 SEC 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.

#### **IV. Tax Administration**

13. 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. Making timely requests for funds necessary for making the timely payment of all applicable taxes, the timely payment of such taxes for which the Tax Administrator has received funds, and the filing of applicable tax returns; and
- c. Fulfilling any information reporting or withholding requirements required for distributions from the Net Fair Fund including, but not limited to, the Foreign Account Tax Compliance Act.

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

15. Payment of all tax obligations and tax related costs and expenses will be requested in accordance with the MKA Appointment Order and paid from the Fair Fund.

**V. The Notice Process**

16. The Distribution Agent shall, as practicable, use its best efforts to identify Potential Claimants from a review of records obtained by the SEC, account information provided by the transfer agent for Broadwind, registered broker-dealers, investment advisors, and any other commercially reasonable sources available to it.

17. Within forty-five (45) days of Court approval of the Plan, the Distribution Agent shall:

- a. create a mailing and claims database of all Potential Claimants based upon information identified by the Distribution Agent;

- b. run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring updated mailing information for Potential Claimants;
- c. design and submit a Claims Packet to the SEC staff for review and approval;
- d. mail, via First Class mail through the United States Postal Service (“USPS”), a Claims Packet to each Potential Claimant identified by the Distribution Agent and to the Distribution Agent’s list of banks, brokers, and other nominees in accordance with paragraph 20, below;
- e. establish and maintain a website dedicated to the administration of the Fair Fund. The Fair Fund’s website, located at [www.SECvBroadwindFairFund.com](http://www.SECvBroadwindFairFund.com), will make available in downloadable form the approved Plan, the Claims Packet, and related materials, and such other information that the Distribution Agent believes will be beneficial to Potential Claimants;
- f. provide a copy of the Plan and Claims Packet to the SEC staff for posting to its website and request that the SEC staff establish a link to the Fair Fund’s website;
- g. establish and maintain a traditional mailing address and an email address which will be listed on all correspondence from the Distribution Agent to Potential Claimants, as well as, on the Fair Fund’s website;
- h. establish and maintain a toll-free telephone number [1-855-907-3474] for Potential Claimants to obtain information about the Fair Fund; and

i. publish the Summary Notice approved by the SEC staff, in print and/or internet media acceptable to the SEC staff once a week for three consecutive weeks starting within five (5) days of the initial mailing of Claims Packets to Potential Claimants.

18. The SEC staff retains the right to review and approve any material posted on the Fair Fund's website, any material mailed, and any scripts used in connection with communication with Potential Claimants.

19. The Distribution Agent will promptly provide a Claims Packet to any Potential Claimant upon request made via mail, phone, or email prior to the Claims Bar Date.

20. The Distribution Agent will send by mail, email, or other means, a Claims Packet to the Distribution Agent's list of banks, brokers, and other nominees, as well as any other institutions identified during the outreach process that may have records of purchasers of the Eligible Security during the Relevant Period (collectively the "Nominees or Custodians"). The Distribution Agent will request that these entities, to the extent that they were record holders for beneficial owners of the Eligible Security:

a. Within fourteen (14) days of the Nominees' or Custodians' receipt of the Claims Packet, notify and send the Claims Packet to the respective beneficial owners, and, as requested, provide to the beneficial owners a Claims Packet, so that beneficial owners may timely file claims. The burden will be on the Nominees or Custodians to ensure the Claims Packets and other relevant materials are properly disseminated to the beneficial owners ; and/or,

b. provide to the Distribution Agent within fourteen (14) days of receipt of the Claims Packet, a list of last known names and addresses for all beneficial owners for whom the Nominees or Custodians purchased, as the record holder, the Eligible Security during the Relevant Period, so that the Distribution Agent can communicate with the beneficial owners directly.

21. At the discretion of the Distribution Agent, a reasonable number of additional copies of the Claims Packet shall be made available to any Nominee or Custodian requesting same for the purpose of distribution to beneficial owners.

22. Requests to the Distribution Agent for additional copies of the Claims Packet in excess of five hundred (500) are subject to approval by the Distribution Agent in consultation with the Commission staff.

23. Documented reasonable out-of-pocket expenses incurred by the Nominees or the Custodians, which would not have been incurred but for compliance with paragraph 20(a) above, shall be reimbursed by the Fair Fund. The amount of such expenses allowed will be at the discretion of the Distribution Agent in consultation with the Commission staff. Unless otherwise determined by the Distribution Agent in consultation with the Commission staff, out-of-pocket expenses based on the following rates will be considered reasonable:

- a. a maximum of \$0.08 per Claims Packet plus postage at the pre-sort postage rate per Claims Packet actually mailed;
- b. \$0.05 per email of Publication or Notice and Claim Form link disseminated; or
- c. \$0.20 per name, address, and email address provided to the Distribution Agent, up to a maximum of amount of \$1,500.00

24. The Distribution Agent shall attempt to locate anyone whose Claims Packet has been returned by the USPS as undeliverable. The Distribution Agent shall immediately re-mail any returned undelivered mail for which the USPS has provided a forwarding address.

25. The Distribution Agent, with SEC staff approval, may engage a third-party search firm to conduct a more rigorous search for persons whose Claims Packet is returned as undeliverable. The Distribution Agent will, after consultation with the SEC staff, utilize commercially reasonable means to obtain updated addresses for undelivered notices, and re-mail the returned undelivered mail to the updated address. The Distribution Agent will make available, upon request by the SEC staff, a list of all Potential Claimants whose Claims Packets have been returned as “undeliverable” due to incorrect addresses and for which the Distribution Agent has been unable to locate current addresses.

## **VI. Review of Claims and Notification**

26. In all materials that refer to the Claims Bar Date, the filing deadline will be clearly identified with the date, which is ninety (90) days from the initial mailing date of the Claims Packet.

27. To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potential Claimant must submit to the Distribution Agent a properly completed Claim Form reflecting such claim, and it must be accompanied by such documentary evidence to substantiate the claim. Without limitation, this information may include third-party documentary evidence of purchases and dispositions of the Eligible Security, as well as holdings of the Eligible Security, at relevant dates.

28. The burden to prove timely receipt of a claim by the Distribution Agent will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their

Claim Forms in a manner that will enable them to prove timely receipt of the Claim Form by the Distribution Agent. A Claim Form that is postmarked, or otherwise received by the Distribution Agent, after the Claims Bar Date will not be accepted unless the deadline is extended by the Distribution Agent for good cause shown, after consultation with the SEC staff.

29. The Distribution Agent shall review each claim and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing the claim data and supporting documentation (or lack thereof), verifying the claim, and calculating each Potential Claimant's loss pursuant to the Plan of Allocation.

30. Each Potential Claimant will have the burden of proof to establish the validity and amount of the claim and qualification as an Eligible Claimant, including the burden to certify that he, she, or it is not an Excluded Party. The Distribution Agent will have the right to request, and the Potential Claimant will have the burden to promptly provide to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

31. All claims and supporting documentation necessary to determine a Potential Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be verified by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant, unless the Distribution Agent accepts such declaration from someone authorized to act on the Potential Claimant's behalf, whose authority is supported by such documentary evidence as the Distribution Agent deems necessary.

32. Electronic claims submission is encouraged. The Claims Packet will include directions on how Potential Claimants can submit their claims electronically via the Fair Fund website. If using the web-based claim filing option, a Potential Claimant must submit their claim

to the Distribution Agent by 11:59 p.m. on the Claims Bar Date. The Claims Packet will also include directions for submission of claims if the Potential Claimant is unable to submit their claim electronically. All claims must be received by the Distribution Agent on or before the Claims Bar Date.

33. When submitting claims to the Fair Fund on behalf of its clients, all Third-Party Filers must use the electronic filing template provided by the Distribution Agent in this matter. Files that do not comply with the template and format provided by the Distribution Agent may be rejected. Third-Party Filers must also submit a signed master proof of claim and release, as well as proof of authority to file on behalf of the claimant(s) at the time the electronic file of transactions is submitted. Failure to do so may result in rejection of the claim(s).

34. Each Third-Party Filer must establish the validity and amount of each claim in its submission. Like all other Potential Claimants, Third-Party Filers must submit such supporting documentary evidence of purchases, dispositions, and holdings of the Eligible Security as the Distribution Agent deems necessary or appropriate to substantiate each individual claim. Without limitation, this includes the complete name of the Potential Claimant (beneficial account owner) and its Taxpayer Identification Number (for individuals) or Employer Identification Number (for companies), sufficient contact information to confirm the identity of the beneficial owner, and documentation from the original bank, broker or other institution of purchases and dispositions of the Eligible Security (account statements, confirmations and other documentation of purchases and dispositions), , as well as, holdings of the Eligible Security on pertinent dates. Documentation generated by the Third-Party Filer as well as affidavits in lieu of supporting documentation, will not be accepted unless, for good cause, the Distribution Agent determines it acceptable. The Distribution Agent will have the right to request, and the Third-Party Filer will

have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed necessary by the Distribution Agent to substantiate the claim(s) contained in the submission. Documentation from a Third-Party Filer that is not acceptable to the Distribution Agent will result in rejection of the affected claim(s). The determination of the Distribution Agent to reject a claim for insufficient documentation, as reflected on the Final Determination Notice, is final and within the discretion of the Distribution Agent.

35. Distribution Payments must be made by check or electronic payment payable to the Eligible Claimant (beneficial account owner). The Third-Party Filer shall not be the payee of any Distribution Payment check or electronic Distribution Payment. Subject to ¶ 35 below (ERISA Plans), any other payment arrangement must be discussed with the Distribution Agent in consultation with the SEC staff and must be authorized by the Eligible Claimant. Compensation to the Third-Party Filer for its services may not be paid or deducted from the Distribution Payment.

36. If, after discussion with the Distribution Agent in consultation with the SEC Staff and upon authorization by the Eligible Claimant(s), a Distribution Payment is to be made to a Third-Party Filer to distribute to the Eligible Claimant(s), the Third-Party Filer will be required to complete a certification, which will require them, at a minimum, to attest that any distribution to the custodian, trustee, or investment professional representing multiple potentially eligible beneficial owners, will be allocated for the benefit of current or former pooled investors and not for the benefit of management. The certification form will be available on the Fair Fund website and upon request from the Distribution Agent. All such Third-Party Filers must have an auditable mechanism available to the Distribution Agent and the SEC staff to confirm that each Potential Claimant, if determined an Eligible Claimant, received the Distribution Payment.

37. The receipt of the Eligible Security by gift, inheritance, devise, or by operation of law will not be deemed to be a purchase of the Eligible Security, nor will it be deemed an assignment of any claim relating to the purchase of the Eligible Security unless specifically so provided in the instrument of inheritance. However, the recipient of the Eligible Security as a gift, inheritance, devise or by operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted for each transaction in the Eligible Security. In cases where multiple claims are filed by the donor and donee, only the donee claim will be honored, assuming it is supported by proper documentation.

38. 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 administrator, custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent will issue any payments on such claims directly to the administrator, custodian or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's identification of Potential Claimants, the Distribution Agent will 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.

39. The Distribution Agent will provide a Determination Notice within ninety (90) days of the Claims Bar Date to each Potential Claimant who has timely filed a Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim.

The Determination Notice will provide to each Potential 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 Determination Notice will also notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so.

40. Any Potential Claimant with a deficient claim will have thirty (30) days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

41. In the event the claim is denied, in whole or in part, the Determination Notice will state the reason for such denial. Any Potential Claimant seeking reconsideration of a denied claim must advise the Distribution Agent in writing within thirty (30) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim.

42. The Distribution Agent will send, as appropriate, a Final Determination Notice to all Potential Claimants who responded to the Determination Notice in an effort to cure a deficiency or to seek reconsideration of a rejected claim. The Distribution Agent will send such Final Determination Notices no later than sixty (60) days following receipt of documentation or information in response to the Determination Notice, or such longer time as the Distribution Agent determines is necessary for a proper determination concerning the claim.

43. The Distribution Agent may consider disputes of any nature presented by Potential Claimants and will consult the SEC staff as appropriate. The Distribution Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All determinations made by the Distribution Agent in accordance

with the Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

44. Any Eligible Claimant who relocates or otherwise changes contact information after receipt of the Claims Packet must promptly communicate any change in address or contact information to the Distribution Agent.

## **VII. Distribution of the Net Fair Fund**

45. The Distribution Agent shall distribute the Net Fair Fund to all Eligible Claimants only after all timely submitted 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.

46. The Distribution Agent, in consultation with the Tax Administrator and the SEC staff, shall determine the Net Fair Fund by retaining a prudent reserve to pay Administrative Costs. After all distributions and payment of all tax obligations, any remaining amounts in the reserve will become part of the residual described in paragraph 69. For purposes of calculating the residual of the Net Fair Fund, any disgorgement amount(s) ordered by the Court shall be deemed to have been paid out first to Eligible Claimants, with any prejudgment interest and/or penalty amount(s) to be paid out to Eligible Claimants only after the total disgorgement has been paid out in full.

47. Within sixty (60) days following the Final Determination Notice, the Distribution Agent shall prepare a final Payee List that includes the names of Eligible Claimants, the Recognized Loss of each Eligible Claimant, and the Distribution Payment amount. The Distribution Agent shall provide the final Payee List to the Commission staff for review. Upon review the Commission staff shall petition the Court to transfer funds held at the CRIS to the

Distribution Agent for distribution pursuant to the 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.

48. Prior to the disbursement of the Net Fair Fund, the Distribution Agent will establish an escrow account (“Escrow Account”) at a United States commercial bank (the “Bank”), pursuant to a form provided by the Commission staff (the “Escrow Agreement”).

49. The Distribution Agent, pursuant to the Escrow Agreement, shall establish with the Bank a deposit account (e.g. controlled distribution account, managed distribution account, linked checking and investment account) (the “Deposit Account”), insured by the FDIC up to the guaranteed FDIC pass through limit. The Deposit Account shall be linked with the Escrow Account and shall be named, and records maintained, in accordance with the Escrow Agreement.

50. Upon the Commission staff’s receipt, review, and acceptance of the Payee List and the “Reasonable Assurances Letter” from the Distribution Agent pursuant to paragraph 55, the Commission staff will seek an order from the Commission pursuant to Rule 1101(b)(6) of the Commission’s Rules, 17 C.F.R. § 210.1101(b)(6),] (the “Order to Disburse”) to disburse funds to the Bank in accordance with the Payee List (the “Escrow Property”) and pursuant to the Escrow Agreement, for distribution by the Distribution Agent in accordance with the Plan. All disbursements will be made pursuant to a Commission Order. Upon issuance of an Order to Disburse, the Commission staff will direct the transfer of funds to the Bank.

51. During the term of the Escrow Agreement, the Escrow Property shall be fully invested and reinvested by the Bank in short-term U.S. Treasury securities backed by the full

faith and credit of the United States 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, including money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States Government.

52. All interest, dividends, and/or income earned by the Escrow Property will accrue for the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and Deposit Accounts will be the responsibility of the Distribution Agent, who may be reimbursed for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its agents, and/or its affiliates from the Escrow Property.

53. Within twenty (20) business days of the Bank's transfer of the Escrow Property into the Escrow Account, the Distribution Agent shall use its best efforts to commence mailing Distribution Payment checks or effect electronic payments.

54. In consultation with Commission staff, the Distribution Agent shall work with the Bank on an ongoing basis to deposit or invest funds in the Escrow and Deposit Accounts so as to result in the maximum return, taking into account the safety of such deposits or investments and tax implications; and to determine an allocation of funds between the Escrow and the Deposit Accounts. The Distribution Agent shall provide duplicate 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.

55. The Distribution Agent will also provide a "Reasonable Assurances Letter" to the Commission staff, representing that the final Payee List: (a) was compiled in accordance with the Distribution Plan; (b) is accurate as to Eligible Claimants' names, addresses, and their

Recognized Losses; and (c) provides all information necessary to make Distribution Payments to each Eligible Claimant.

56. Checks will be issued by the Distribution Agent from the Deposit Account set up at the Bank. Checks will be issued in U.S. dollars and shall bear a stale date of ninety (90) days from the date of issuance. 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, except as provided in paragraphs 69 and 70 below. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period and has been voided by the Distribution Agent, that Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will be remain in the Fair Fund

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

58. The Distribution Agent, in consultation with the Tax Administrator and the SEC staff, shall determine the Net Fair Fund by retaining a prudent reserve to pay all Administrative Costs, as well as, a reasonable contingency for potential unforeseen issues. After all distributions and payment of all Administrative Costs, any remaining amounts in the reserve will become part of the residual described below. For purposes of calculating the residual of the Net Fair Fund, any disgorgement amount(s) ordered by the Court shall be deemed to have been paid out first to Eligible Claimants, with any prejudgment interest and/or penalty amount(s) to be paid out to Eligible Claimants only after the total disgorgement has been paid out in full.

59. Following the Court's approval of the SEC's motion for the authority to distribute the Net Fair Fund to Eligible Claimants as provided for in this Plan, the Distribution Agent shall use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within fifteen (15) business days of the transfer of the funds into the Escrow Account. All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

60. 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 ninety (90) days after the date of issuance; and,
- d. The name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

61. All Distribution Payments, on their face or the accompanying mailing, shall 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 Broadwind Energy common stock. Any such communication shall be submitted to the SEC staff and the Tax Administrator for review and approval.

62. Electronic or wire transfers may be utilized at the discretion of the Distribution Agent to transfer approved Distribution Payments. For any electronic payment, the exact

amount necessary to make a payment shall be transferred from the Escrow Account directly to the payee bank account in accordance with written instruction provided to the Escrow Bank by the Distribution Agent. All 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 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 SEC staff.

63. The Distribution Agent is entitled to rely on all outstanding rules of law and Court orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution Agent in accordance with the Distribution Plan and all Potential Claimants will have no claims against the Distribution Agent, its employees, agents, and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under this Distribution Plan.

#### **VIII. Post Distribution, Uncashed Checks and Reissues**

64. The Distribution Agent will work with the Bank and maintain information about uncashed checks, returned payments, any returned items due to non-delivery, insufficient addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible and for maintaining a record of such efforts. The Distribution Agent is also responsible for accounting for all payments. The amount of all uncashed payments will continue to be held in the Fair Fund.

65. The Distribution Agent shall use its best efforts to make use of reasonable commercially available resources and other reasonably appropriate means 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.

66. Where new address information becomes available, the Distribution Agent shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than ninety (90) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check. If the Distribution Agent, despite best practicable efforts, is unable to find an Eligible Claimant's correct address, the Distribution Agent, in its discretion, may remove such Eligible Claimant from the distribution and the allocated Distribution Payment will remain in the Net Fair Fund for distribution, if practicable, to the remaining Eligible Claimants. In no event will an Eligible Claimant receive more than their Eligible Loss Amount.

67. The Distribution Agent will re-issue new checks to Eligible Claimants upon the receipt of a valid, written request from the Eligible Claimants prior to the initial stale date. Such reissued checks will be void if not negotiated within sixty (60) days after issuance and in no event will a check be reissued after one hundred fifty (150) days after the original check was issued.

68. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow-up on the status of uncashed Distribution Payments over \$100 (other than those returned as "undeliverable") and take appropriate action to follow up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may reissue such checks, subject to the time limits detailed herein.

**IX. Residual Funds and Second Distribution**

69. A residual within the Net Fair Fund (the “Residual”) will be established for any amounts remaining after all distribution payments have been made. The Residual may include, among other things, funds reserved for future taxes, Administrative Costs, post-distribution contingencies, amounts from Distribution Payments that have not been cashed, amounts from Distribution Payments that were not delivered or accepted upon delivery, and tax refunds. For purposes of calculating the residual of the Net Fair Fund, any disgorgement amounts ordered shall be deemed to have been paid out first to Eligible Claimants, with any prejudgment interest and/or penalty amounts to be paid out to Eligible Claimants only after the total disgorgement has been paid out in full.

70. The Distribution Agent, in consultation with SEC staff, may distribute the Residual, if feasible, to Eligible Claimants in a manner that is consistent with this Distribution Plan up to the Recognized Loss amount for each Eligible Claimant and subject to the requirements of the Plan of Allocation detailed herein, provided however, that the second distribution shall only be made to those Eligible Claimants who: received Distribution Payments in the first distribution; and/or cashed the Distribution Payments they received in the first distribution. Eligible Claimants who did not receive or negotiate their Distribution Payments in the first distribution shall not receive any further distributions. The SEC staff will seek the Court’s approval of any distribution of the Residual.

71. If, after the distribution is complete and all Administrative Costs have been paid, and funds remain in the Net Fair Fund, and further distributions to investors is infeasible, the Residual shall be transferred to the SEC, pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting,

which will include a recommendation as to the final disposition of the Residual, consistent with Section 21(d)(7) of the Exchange Act [15 U.S.C. §78u(d)(7)]<sup>1</sup>, *Liu v. SEC*, 140 S. Ct. 1936 (2020), and equitable principles. If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>2</sup>

**X. Wrap Up and Wind Down of Distribution**

72. Pursuant to Commission direction, the Distribution Agent will retain all claims materials in paper and electronic form, and all other distribution records in either form (imaged documents being an acceptable substitute for hard copy originals) for a period of six (6) years from approval of the final fund accounting by the Court. Thereafter, the Distribution Agent will transfer the documents to the SEC, if and as directed by the SEC staff, or destroy all documents. In addition, the Distribution Agent will terminate the website, P.O. Box and customer service telephone line(s) established specifically for the administration of the Fair Fund six (6) months after the transfer of all remaining funds to the Commission, or at such earlier date pursuant to the SEC's staff direction.

**XI. Payment of Taxes and Administrative Costs**

73. All taxes and Administrative Costs will be paid from the Fair Fund, subject to the review by the SEC's staff, upon Court approval.

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<sup>1</sup> Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

<sup>2</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or fair fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

**XII. Fair Fund Reporting and Accounting**

74. The Distribution Agent shall provide SEC staff, who shall file with the Court, a progress report and a quarterly account statement in a format to be provided by SEC staff, within forty-five (45) days of the Court approval of this Plan, and shall provide to SEC staff and file additional reports and quarterly account statements within twenty (20) days after the end of every quarter thereafter.

75. The progress report and quarterly account statement shall inform the Court, and SEC staff, of the activities and status of the Fair Fund during the relevant reporting period, and once the funds are transferred to the Distribution Agent 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 those account(s), all monies earned or received into these account(s), funds distributed to Eligible Claimants under the Plan, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of the Plan

76. When the final distribution is completed, the Distribution Agent shall provide to SEC staff a final report summarizing all tasks undertaken and the outcome of its administrative efforts. The Distribution Agent shall make arrangements for the final payment of all outstanding taxes and Administrative Costs, and submit a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Plan.

### **XIII. Other Rights and Powers**

77. The Court reserves the right to amend this Plan from time to time, and retains exclusive jurisdiction over all claims arising in connection with this Plan, including, but not limited to, claims against the Distribution Agent or Tax Administrator asserting liability for violation of any duty imposed by the Plan or other Court order.

78. 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.

79. 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 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.

80. The submission of the Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant is not intended to be a release of an Eligible Claimant's rights and claims against party.

81. 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.

#### **XIV. Termination of the Fair Fund**

82. Once all Distribution Payments have been negotiated or voided, the Fair Fund Residual in the Escrow and Deposit Accounts will be transferred to the U.S. Treasury upon approval of this Court

83. Upon receipt of the Residual, the SEC will seek an Order from the Court, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

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

- a. A final report and final accounting has been submitted to and approved by the Court;
- b. All taxes have been paid;
- c. All Administrative Costs have been paid; and
- d. The Court has approved the SEC staff's recommendation as to the final disposition of the Residual consistent with Section 21(d)(7) of the Exchange Act, *Liu v. SEC*, 140 S. Ct. 1936 (2020), and equitable principles.

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

## EXHIBIT A

### **PLAN OF ALLOCATION**

This Plan of Allocation provides for the distribution of the Net Fair Fund to Eligible Claimants based on their Eligible Loss Amount, which will be calculated by summing the Recognized Loss per share for each purchase or acquisition of the Eligible Security during the Relevant Period that is listed on the Claim Form and for which adequate documentation is provided and reducing such amount by the amount of any compensation for the loss that resulted from the conduct described in the complaint in this case that was received from another source.

- A. For shares of Broadwind Energy common stock purchased or otherwise acquired during the period from March 16, 2009 through and including March 11, 2010, and:
  1. Sold prior to the close of trading on March 11, 2010, the Recognized Loss per share is \$0.00.
  2. Sold between March 12, 2010 and June 9, 2010, inclusive, the Recognized Loss per share shall be the lesser of a) \$1.20 per share, or b) the purchase price *minus* the average market closing price of Broadwind Energy common stock from March 12, 2010 through the date of sale, as shown in Table A below;
  3. Held as of the close of trading on June 9, 2010, the Recognized Loss per Share shall be the lesser of (a) \$1.20 per share, or (b) the purchase price per share minus \$3.70, the average closing price of Broadwind Energy common stock as of June 9, 2010.
- B. The Recognized Loss for shares purchased after March 11, 2010 is \$0.00.
- C. If the Recognized Loss per share is positive, reflecting a gain, the Recognized Loss per Share shall be \$0.00.

D. For each Potential Claimant who held shares of the Eligible Security as of the beginning of the Relevant Period or made multiple purchases or sales during the Relevant Period, the first-in, first-out (“FIFO”) method will be applied to such holdings, purchases and sales. Under the FIFO method, sales of shares during the Relevant Period will be matched, in chronological order, first against shares held at the beginning of the Relevant Period. The remaining sales of shares during the Relevant Period will then be matched, in chronological order, against shares purchased during the Relevant Period. The date of acquisition or sale is the “trade” date as distinguished from the “settlement” date. Option contracts will not be valued.

E. In the event that there is an opening short position in Broadwind Energy common stock, the earliest purchases of Broadwind Energy common stock during the Relevant Period shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

F. Purchase price paid and sale price received will not include commissions and other fees.

G. If an Eligible Claimant had an overall gain from transactions in Broadwind Energy common stock during the Relevant Period, the value of his, her or its Eligible Loss Amount will be \$0.00.

H. If an Eligible Claimant suffered a Market Loss on transactions in Broadwind Energy common stock during the Relevant Period, but that Market Loss was less than the Eligible Claimant’s Eligible Loss Amount calculated above, then the Eligible Claimant’s Eligible Loss Amount will be limited to the Market Loss.

I. For purposes of determining whether an Eligible Claimant had a Market Profit from all transactions in Broadwind Energy common stock during the Relevant Period or suffered

a Market Loss, the Distribution Agent shall: (a) sum the amount paid for all Broadwind Energy common stock purchased during the Relevant Period; (b) match any sales of Broadwind Energy common stock during the Relevant Period first against the opening position in the stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (c) sum the amount received for sales of the remaining shares of Broadwind Energy common stock sold during the Relevant Period; and (d) ascribe a \$4.47 per share holding value for each share of Broadwind Energy common stock purchased during the Relevant Period and still held at the close of trading on March 12, 2010. The difference between the Total Purchase Amount (a), and the sum of the sales proceeds (c), and the holding value (d) will be deemed an Eligible Claimant's Market Profit or Market Loss.

J. If the sale date for a share of Broadwind Energy common stock falls before the purchase date then the share has a Recognized Loss per share of \$0.00.

K. An investor's Eligible Loss Amount shall be determined by summing the investor's Recognized Loss per share across all shares purchased during the Relevant Period. If the Eligible Loss Amount is a negative number, reflecting an overall gain, then the Eligible Loss Amount will be \$0.00.

L. If the Net Fair Fund has sufficient funds, each Eligible Claimant will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount. If the Net Fair Fund has funds in excess of that necessary to pay each Eligible Claimant a Distribution Payment equal to the amount of their Eligible Loss Amount, the Distribution Agent, in consultation with the SEC staff, may include in the Distribution Payments an additional amount

to compensate each Eligible Claimant for the time value of money on their respective Eligible Loss Amount (“Reasonable Interest”).<sup>3</sup>

M. If the Net Fair Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Claimants, then each Eligible Claimant will receive a Distribution Payment equal to their Eligible Loss Amount in proportion to the total Eligible Loss Amount of all Eligible Claimants (“*Pro-Rata* Share”) multiplied by the Net Fair Fund. In no instance will an Eligible Claimant receive a Distribution Payment that when combined with any compensation received from another source for the loss that resulted from the conduct described in the complaint in this case exceeds his, her, or its Eligible Loss Amount. However, Reasonable Interest, if awarded, may result in a Distribution Payment in excess of the Eligible Loss Amount.

N. If an Eligible Claimant’s Distribution Payment is less than \$10.00 (the “Minimum Distribution Amount”), that Eligible Claimant will not receive a Distribution Payment and the funds will be distributed to other Eligible Claimants whose Distribution Payments are greater than \$10.00.

**Table A: Broadwind Common Stock Average Closing Price, March 12 – June 9, 2010**

<b>Date</b>	<b>Average Closing Price from March 12, 2010 to Date Shown</b>	<b>Date</b>	<b>Average Closing Price from March 12, 2010 to Date Shown</b>	<b>Date</b>	<b>Average Closing Price from March 12, 2010 to Date Shown</b>
3/12/2010	\$4.47	4/13/2010	\$4.40	5/12/2010	\$4.16
3/15/2010	\$4.29	4/14/2010	\$4.40	5/13/2010	\$4.15
3/16/2010	\$4.27	4/15/2010	\$4.39	5/14/2010	\$4.13
3/17/2010	\$4.23	4/16/2010	\$4.39	5/17/2010	\$4.11
3/18/2010	\$4.21	4/19/2010	\$4.38	5/18/2010	\$4.09

<sup>3</sup> “Reasonable Interest” will be calculated using the short-term Applicable Federal Rate, compounded quarterly from the date of the loss through the approximate date of the disbursement of the Fair Fund

3/19/2010	\$4.22	4/20/2010	\$4.37	5/19/2010	\$4.06
3/22/2010	\$4.23	4/21/2010	\$4.36	5/20/2010	\$4.04
3/23/2010	\$4.27	4/22/2010	\$4.36	5/21/2010	\$4.02
3/24/2010	\$4.31	4/23/2010	\$4.35	5/24/2010	\$3.99
3/25/2010	\$4.33	4/26/2010	\$4.35	5/25/2010	\$3.96
3/26/2010	\$4.36	4/27/2010	\$4.34	5/26/2010	\$3.93
3/29/2010	\$4.38	4/28/2010	\$4.33	5/27/2010	\$3.90
3/30/2010	\$4.39	4/29/2010	\$4.32	5/28/2010	\$3.87
3/31/2010	\$4.40	4/30/2010	\$4.31	6/1/2010	\$3.84
4/1/2010	\$4.41	5/3/2010	\$4.30	6/2/2010	\$3.82
4/5/2010	\$4.41	5/4/2010	\$4.29	6/3/2010	\$3.79
4/6/2010	\$4.42	5/5/2010	\$4.27	6/4/2010	\$3.77
4/7/2010	\$4.41	5/6/2010	\$4.25	6/7/2010	\$3.75
4/8/2010	\$4.41	5/7/2010	\$4.22	6/8/2010	\$3.73
4/9/2010	\$4.41	5/10/2010	\$4.20	6/9/2010	\$3.70
4/12/2010	\$4.40	5/11/2010	\$4.18		