

1 Keshia W. Ellis (Michigan Bar # P65146)
(elliskw@sec.gov)
2 Senior Counsel

3 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
4 100 F Street, N.E.
Washington, DC 20549-5631
5 Telephone: (202) 551-4406
Facsimile: (202) 772-9363
6

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 SECURITIES AND EXCHANGE COMMISSION,
13 Plaintiff,
14 v.
15 DIAMOND FOODS, INC.
16 Defendant.

Case No. 3:14-cv-00123-WHA

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
DISTRIBUTION PLAN**

17 **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S**
18 **DISTRIBUTION PLAN**
19

20 **I. Introduction**

21 1. On January 9, 2014, the U.S. Securities and Exchange Commission (“SEC” or
22 “Commission”) filed separate actions in District Court against Diamond Foods, Inc. (“Diamond”) and its
23 former chief financial officer (CFO) Steven Neil¹ (“Neil,” together with Diamond and Mendes, the
24 “Defendants”) alleging violations of the federal securities laws because of their roles in an accounting
25 scheme to fraudulently manipulate and delay appropriate recording of the costs paid to walnut growers in
26 order to boost earnings and meet estimates by stock analysts during fiscal years 2010 and 2011.
27
28

¹ See *Securities and Exchange Commission v. Neil*, Case No. 3:14-cv-00122-WHA.

1 2. The SEC simultaneously entered a settled Order Instituting Cease and Desist Proceedings
2 Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of
3 1934, Making Findings, and Imposing a Cease-and-Desist Order against its former chief executive officer
4 (CEO) Michael Mendes (“Mendes”) in which he was ordered to pay a \$125,000.00 civil penalty. Mendes
5 paid the civil penalty on January 23, 2014..

6 3. On January 21, 2014, the Court entered a Final Judgment against Diamond (Dkt. No. 7).
7 The Court ordered that Diamond was liable for a civil penalty in the amount of \$5,000,000.00 pursuant to
8 Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C.
9 §78u(d)]. Pursuant to the Final Judgment, Diamond paid \$5,000,000.00 to the Commission on January
10 31, 2014. In the separate action against Neil, the Court entered a Final Judgment on February 2, 2015, in
11 which Neil was found liable for a civil penalty in the amount \$125,000.00. The Commission received
12 payment from Neil on February 3, 2015.

13 4. The total funds paid by the Defendants, \$5,250,000.00, constitute the Distribution Fund and
14 were deposited in an interest bearing account at the United States Treasury. On October 28, 2016, the
15 Court appointed Damasco & Associates LLP (now Miller Kaplan and Arase LLC) as Tax Administrator
16 for the Distribution Fund (Dkt. No. 11).²

17 5. By Order dated November 3, 2016, the Court created a Fair Fund pursuant to Section 308(a)
18 of the Sarbanes-Oxley Act of 2002, as amended, to return funds to injured investors and appointed
19 Kurtzman Carson Consultants, LLC (“KCC”) (“Distribution Agent”) to serve as the Distribution Agent to
20 oversee all aspects of the administration and distribution of the Fair Fund in accordance with the terms of
21 a distribution plan to be approved by the Court, and in coordination with the Commission staff.

22 6. This Distribution Plan was developed jointly by the Distribution Agent and the Commission
23 staff in accordance with practices and procedures customary in Fair Fund administrations. This
24 Distribution Plan governs the administration and distribution of the Fair Fund, and sets forth the method
25 and procedures for distributing the assets of the Fair Fund to certain Diamond Foods investors harmed by
26 the misconduct.

27
28 ² As of October 1, 2016, Damasco & Associates, LLC became a part of Miller Kaplan Arase LLC. The firm’s
engagement with the SEC and their ability to carry out their appointment as Tax Administrator for this case have not
changed.

1 **II. Definitions**

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

- 3 a. “**Check-cashing Period**” means the ninety (90) days following the mailing of
4 Distribution Payment checks to Eligible Claimants in accordance with this
5 Distribution Plan.
- 6 b. “**Diamond Foods Fair Fund**” or “**Fair Fund**” refers to the \$5,250,000.00 fund
7 created by the Court pursuant to Section 308(a) of Sarbanes-Oxley, as amended, and
8 for the benefit of investors harmed by the Defendants’ misconduct described in the
9 Complaint, plus any accumulated interest or earnings thereon or any additions thereto
10 as may be provided by future Court order or agreement in related cases or otherwise.
- 11 c. “**Claim Deficiency Notice**” means the notice sent by the Distribution Agent to a
12 Potential Claimant whose claim is deficient in one or more ways (e.g., failure to
13 provide required information or documentation). The Claim Deficiency Notice shall
14 advise the Potential Claimant of the reason(s) for the deficiency and the opportunity
15 to cure such deficiency. Subject to certain extensions provided for in this Plan, the
16 deadline to cure deficiencies shall be twenty (20) days from the date of the Claim
17 Deficiency Notice.
- 18 d. “**Days**” means calendar days, unless otherwise specified herein.
- 19 e. “**Distribution Agent**” refers to KCC (collectively with all employees, agents,
20 consultants, or independent contractors of such firm), which has been appointed by
21 the Court to administer and distribute the Fair Fund in accordance with the terms of
22 this Distribution Plan and the Court’s orders.
- 23 f. “**Distribution De Minimis Amount**” shall mean the minimum specified dollar
24 amount that a Distribution Payment must equal or exceed in order for a distribution to
25 be made to an Eligible Claimant. The *Distribution De Minimis* Amount shall be
26 \$10.00.
- 27 g. “**Distribution Payment**” means the payment to an Eligible Claimant in accordance
28 with the terms of this Distribution Plan.

- 1 h. “**Distribution Plan**” means this Distribution Plan in the form approved by the Court.
- 2 i. “**Eligible Claimant**” means a Potential Claimant (other than Excluded Parties) who
- 3 suffered a loss as a result of purchase transactions in Eligible Securities during the
- 4 Relevant Period and who is determined by the Distribution Agent to be eligible for a
- 5 Distribution Payment from the Fair Fund.
- 6 j. “**Eligible Loss Amount**” is the amount of loss an Eligible Claimant incurred through
- 7 the investment in Eligible Securities during the Relevant Period calculated in
- 8 accordance with the Plan of Allocation.
- 9 k. “**Eligible Securities**” refers to shares of Diamond Foods, Inc. common stock listed on
- 10 the NASDAQ National Market Systems and registered with the Commission.
- 11 Transactions in common stock during the Relevant Period that are pursuant to, or in
- 12 connection with, a swap, an option, or other derivative will not be eligible for a
- 13 recovery.
- 14 l. “**Excluded Parties**” shall mean: (1) Defendants, (2) the Distribution Agent, its
- 15 employees, and those persons assisting the Distribution Agent in its role as the
- 16 Distribution Agent, and (3) all other entities or individuals who (a) are or have at any
- 17 time been a parent, subsidiary, affiliate, partner, or member of Defendants; (b)
- 18 exercised control of or were controlled by the Defendants; (c) during the Relevant
- 19 Period to the present, were employed by, or served as officers or directors, or were
- 20 members of the Defendants or other entity that is deemed to be an Excluded Party
- 21 pursuant to parts (a) and (b) hereof. The Proof of Claim Form will require all
- 22 Potential Claimants to certify that that they are not an Excluded Party.
- 23 m. “**Fair Fund Notice**” means a written notice from the Distribution Agent to Potential
- 24 Claimants informing them of the Fair Fund and its eligibility requirements, and
- 25 explaining how to submit a claim. The Fair Fund Notice will be both mailed and
- 26 published according to the schedule detailed herein.
- 27 n. “**Filing Deadline**” means the date established in accordance with this Distribution
- 28 Plan by which Proof of Claim Forms must be postmarked or submitted electronically

1 in order to receive consideration under the Distribution Plan. Subject to certain
2 extensions provided for in this Distribution Plan, the Filing Deadline will be ninety
3 (90) days from the initial notice mailing.

4 o. “**Net Available Fair Fund**” means the Fair Fund, less any amounts expended for tax
5 obligations, fees, and expenses of the Distribution Agent and Tax Administrator, and
6 investment fees in accordance with this Distribution Plan.

7 p. “**Notice Packet**” means the materials relevant to submitting a claim that may be
8 provided to Potential Claimants known to the Distribution Agent or to those who
9 obtain such materials through a website or other appropriate delivery mechanisms.
10 These materials will include a copy of the Fair Fund Notice and a Proof of Claim
11 Form (together with instructions for completion of the Proof of Claim Form).

12 q. “**Notice of Publication**” means the publication of the Fair Fund Notice, or a notice
13 closely resembling the Fair Fund Notice, in print, *PR Newswire*, or internet media in a
14 manner deemed appropriate by the Distribution Agent and not unacceptable to the
15 Commission staff. Such notice (the text of which shall be approved by the
16 Commission staff) shall include, at a minimum, a statement that the Fair Fund relates
17 to purchases of Eligible Securities during the Relevant Period and the means of
18 obtaining a Notice Packet.

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

21 s. “**Plan of Allocation**” means the methodology by which a Potential Claimant’s
22 Eligible Loss Amount is calculated. The Plan of Allocation is set forth in Appendix I
23 attached hereto.

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

- 1 u. **“Proof of Claim Form”** means the form designed by the Distribution Agent for the
2 filing of claims in accordance with the terms of this Distribution Plan. The Proof of
3 Claim Form will require, at a minimum, sufficient documentation reflecting any
4 Potential Claimant’s purchases and dispositions of Eligible Securities during the
5 Relevant Period.
- 6 v. **“Recognized Claim Amount”** shall be the Eligible Claimant’s compensable
7 allocation amount calculated pursuant to the methodology of the Plan of Allocation.
- 8 w. **“Rejection Notice”** shall mean the notice sent by the Distribution Agent to a
9 potentially Eligible Claimant stating the Distribution Agent’s determination that the
10 Eligible Claimant’s claim is not eligible to receive any distribution.
- 11 x. **“Relevant Period”** for the purposes of this Distribution Plan means the period of time
12 commencing on February 26, 2010 and continuing until February 9, 2012 inclusive.
- 13 y. **“Request for Reconsideration Deadline”** shall mean the date established in
14 accordance with this Plan by which a Potential Claimant’s dispute of a Rejection
15 Notice must be filed to challenge the Rejection Notice. Subject to certain extensions
16 provided for in this Distribution Plan, the deadline to file such requests shall be
17 twenty (20) days from the date of Rejection Notice.
- 18 z. **“Tax Administrator”** means Miller Kaplan and Arase LLP, formerly known as
19 Damasco & Associates LLP, the firm appointed by the Court on October 18, 2016
20 (Dkt. No. 11) as the Tax Administrator in this action.

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

22 **A. Identification of and Notice to Potential Claimants**

23 8. The Distribution Agent will, insofar as is practicable, use its best efforts to identify Potential
24 Claimants from a review of trading records and account information provided by the Defendants, the
25 transfer agent for Diamond Foods, registered broker-dealers, market makers, investment advisors and
26 other sources. The Distribution Agent will coordinate with Commission staff to send document requests
27 to any of the aforementioned entities to identify investors who purchased Diamond Foods common stock
28 during the Relevant Period.

1 9. In order to ensure a timely mailing to Potential Claimants, the transfer agent or any other
2 entity described in paragraph 6 shall deliver the requested documents to the Distribution Agent no later
3 than fifteen (15) days from the date the document request is received. The Company and/or its
4 representatives shall also provide assistance to the Distribution Agent, as necessary, to obtain information
5 from the transfer agent and/or Depository Trust and Clearing Corporation regarding banks and brokers
6 that traded in Eligible Securities during the Relevant Period.

7 10. The Distribution Agent will create a mailing database consisting of the records provided by
8 Diamond Foods' transfer agent or other entities described in paragraph 6, provided by the SEC, or
9 otherwise obtained by the Distribution Agent.

10 11. The Distribution Agent will design and submit a Notice Packet, including a Fair Fund
11 Notice and a Proof of Claim Form, to the Commission staff for review and approval within 15 days
12 following the entry by this Court of an Order approving this Distribution Plan.

13 12. Before commencing any mailing, the Distribution Agent will run a National Change of
14 Address search to obtain updated addresses for all Potential Claimants recorded in the database.

15 13. The Distribution Agent will commence mailing the Fair Fund Notice to all Potential
16 Claimants known to the Distribution Agent within sixty (60) days following the entry by this Court of an
17 Order approving this Distribution Plan ("Initial Mailing") or after the last document request is received
18 (as described in paragraph 7), whichever is later. Each Fair Fund Notice will notify the Potential Claimant
19 of the Fair Fund, contain a brief description of the eligibility requirements, generally describe the Fair
20 Fund's claim and distribution processes, explain how to obtain a copy of the approved Distribution Plan
21 and Proof of Claim Form by request or from the Fair Fund website, and provide instructions for
22 submitting a claim.

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

28

- 1 a. Notify the respective beneficial owners within fourteen (14) days of receipt of the
2 Distribution Agent’s notice so that beneficial owners may timely file a claim. The
3 burden will be on the record holders to ensure the Notice Packets and other relevant
4 materials are properly disseminated to their customers; and/or
5 b. Provide the Distribution Agent within fourteen (14) days of receipt of the Distribution
6 Agent’s notice, a list of last known names and addresses for all beneficial owners for
7 whom the record holders purchased Eligible Securities during the Relevant Period so
8 that the Distribution Agent can communicate with them directly.

9 15. Notice Packets will be available on the Fair Fund website to brokerages and other
10 institutions that hold Eligible Securities in “street name” for the benefit of their customers who are the
11 beneficial owners of the securities. The Distribution Agent will promptly provide a Notice Packet to any
12 Potential Claimant upon request. Additionally, the Distribution Agent shall continue to supply the Notice
13 Packet to Potential Claimants who contact the Distribution Agent requesting a copy via mail, phone, or e-
14 mail.

15 16. Within twenty (20) days of the Initial Mailing of the Fair Fund Notice, the Distribution
16 Agent will carry out the Notice Publication, which will notify the public of the Fair Fund, contain a brief
17 description of the eligibility requirements, generally describe the Fair Fund’s claim and distribution
18 processes, explain how to obtain a copy of the approved Distribution Plan and Proof of Claim Form by
19 request or from the Fair Fund website, and provide instructions for submitting a claim.

20 17. No later than the date of Initial Mailing the Distribution Agent will establish and maintain a
21 website devoted solely to the Fair Fund. The Fair Fund website, located at
22 www.DiamondFoodsFairFund.com, will make available a copy of the Fair Fund Notice, the approved
23 Distribution Plan, court documents, and will provide information regarding the claims process and
24 eligibility requirements for participation in the Fair Fund. The website will also include a copy of the
25 Proof of Claim Form and related materials in downloadable form, and such other information covering
26 process or substance that the Distribution Agent believes will be beneficial to Potential Claimants. The
27 Commission staff retains the right to review and approve any material posted on the Fair Fund website.
28

1 18. The Distribution Agent will provide a copy of the Distribution Plan and Fair Fund Notice to
2 the Commission staff to post the approved Distribution Plan and Fair Fund Notice on the Commission's
3 website, Information for Harmed Investors page, located at
4 <https://www.sec.gov/divisions/enforce/claims.htm> and establish a link to the Fair Fund website.

5 19. No later than the date of Initial Mailing the Distribution Agent will establish and maintain a
6 toll-free telephone number for Potential Claimants to call to speak to a live representative of the
7 Distribution Agent during its regular business hours, 9:00 a.m. to 8:00 p.m., Eastern Standard Time, or,
8 outside of such hours, to hear prerecorded information about the Fair Fund. The Distribution Agent will
9 advise the Commission staff of the toll-free telephone number. The Distribution Agent will also establish
10 and maintain a traditional mailing address and an email address to enable Potential Claimants to
11 correspond with the Distribution Agent.

12 20. The Distribution Agent will attempt to locate any Potential Claimant whose mailing is
13 returned by the United States Postal Service ("USPS") as "undeliverable." The Distribution Agent will
14 utilize all means reasonably available to obtain updated addresses in response to undeliverable notices,
15 and forward any returned mail for which an updated address is provided or obtained. Additionally, the
16 Distribution Agent may engage a third-party search firm to conduct more rigorous searches for missing
17 Potential Claimants. Additional efforts to identify new addresses for returned undelivered mail will be
18 conducted as necessary and economically reasonable after consultation with the staff of the Commission.
19 The Distribution Agent will make available, upon request by the Commission staff, a list of all Potential
20 Claimants whose Distribution Fund Notices have been returned as "undeliverable" due to incorrect
21 addresses and for which the Distribution Agent has been unable to locate current addresses.

22 **B. Claims Process**

23 21. The Filing Deadline will be clearly identified in all materials as the first business date
24 following the calendar date ninety (90) days from the Initial Mailing. To avoid being barred from
25 asserting a claim, each Potential Claimant must submit to the Distribution Agent a properly completed
26 Proof of Claim Form reflecting such Potential Claimant's claim, together with all required supporting
27 documentation, postmarked on or before the Filing Deadline. A Proof of Claim Form that is postmarked
28 after the Filing Deadline will be marked as "late" and only accepted if, after consulting with the

1 Commission staff, the processing of these claims will not delay the distribution process, unless the
2 deadline is extended by the Distribution Agent after consultation with Commission Staff. Any extension
3 will be published on the Fair Fund website.

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

8 23. Proof of Claim Forms must be properly filled out per the instructions provided by the
9 Distribution Agent, and must be accompanied by such documentary evidence as the Distribution Agent
10 deems necessary or appropriate to substantiate the claim. Without limitation, this information may include
11 third party documentary evidence of purchases and dispositions of Eligible Securities during the Relevant
12 Period, as well as holdings of Eligible Securities at pertinent dates.

13 24. The Distribution Agent will review all claim submissions and determine the eligibility of
14 each Potential Claimant to participate in the Fair Fund by reviewing the claim data and supporting
15 documentation (or the lack thereof), verifying the claim, and calculating each Potential Claimant's
16 Eligible Loss Amount pursuant to the Plan of Allocation. Each Potential Claimant will have the burden
17 of proof to establish the validity and amount of his or her claim, and that he or she qualifies as an Eligible
18 Claimant. The Distribution Agent will have the right to request, and the Potential Claimant will have the
19 burden of providing to the Distribution Agent, any additional information and/or documentation deemed
20 relevant by the Distribution Agent.

21 25. The receipt of Eligible Securities by gift, inheritance, devise, or operation of law shall not
22 be deemed to be a purchase of Eligible Securities during the Relevant Period, nor shall it be deemed an
23 assignment of any claim relating to the purchase of such securities unless specifically provided in the
24 instrument of gift or assignment. However, the recipient of Eligible Securities as a gift or as a distribution
25 from an estate shall be eligible to file a Proof of Claim form and participate in the distribution of the Fair
26 Fund to the extent the particular donor or decedent as the actual purchaser of Eligible Securities would
27 have been eligible based upon the circumstance of such purchase. Such a claim will be computed by
28 using the date and price of the original purchase and not the date and price of transfer. However, the done

1 and the donor may not both make a claim with regard to the same share of an Eligible Security. If both
2 the donor and the done make such a claim, only the claim filed by the done will be honored.

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

8 **C. Deficiency and Claim Determination Processes**

9 27. The Distribution Agent will provide a Claim Deficiency Notice to each Potential Claimant
10 who has filed a Proof of Claim Form with the Distribution Agent that is deficient in whole or in part,
11 setting forth the Distribution Agent's conclusions concerning such claim. The Claim Deficiency Notice
12 shall be provided to such affected claimants within (20) days after the Filing Deadline.

13 28. The Claim Deficiency Notice will provide to each Potential Claimant whose claim is
14 deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to provide required information
15 or documentation). The Claim Deficiency Notice will also notify the Potential Claimant of the
16 opportunity to cure such deficiency, and provide instructions regarding what is required to do so. Any
17 Potential Claimant with a deficient claim will have twenty (20) days from the date of the Claim
18 Deficiency Notice to cure any deficiencies identified in the Claim Deficiency Notice.

19 29. In the event the claim is denied, in whole or in part, the Rejection Notice will state the
20 reason for such denial. Any Potential Claimant seeking reconsideration of a rejected claim must advise
21 the Distribution Agent in writing within twenty (20) days of the date of the Rejection Notice. All requests
22 for reconsideration must include the necessary documentation to substantiate the basis upon which the
23 Potential Claimant is requesting reconsideration of their claim.

24 30. The Distribution Agent may consider requests for review of any claim determination
25 presented by Potential Claimants. Potential Claimants who request review must provide a reason for the
26 request and documents supporting their claim. The Distribution Agent will investigate the request for
27 review, and within thirty (30) days of receipt of the written request, the Distribution Agent will notify the
28 Potential Claimant of the final resolution of the review. The Distribution Agent will notify the

1 Commission of any request for review that does not result in the resolution of the claim. The Distribution
2 Agent will have the authority to waive technical claim deficiencies and approve claims on a case-by-case
3 basis, or in groups of claims. All determinations made by the Distribution Agent in accordance with the
4 Distribution Plan in any dispute, request for review, or request to cure a deficient claim will be final and
5 not subject to appeal.

6 31. The Potential Claimant has the burden of notifying the Distribution Agent of a change in his
7 or her current address and other contact information, and of ensuring that such information is properly
8 reflected in the Distribution Agent's records.

9 32. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C.
10 §1002(3), which do not include individual retirement accounts, and such plan's participants, are properly
11 made by the administrator, custodian, or fiduciary of the plan and not by the plan's participants. The
12 Distribution Agent will issue any payments on such claims directly to the administrator, custodian, or
13 fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any
14 payments received in a manner consistent with its fiduciary duties and the governing account, or plan
15 provisions. With respect to any retirement plan that has been closed prior to the Distribution Agent's
16 identification of Potential Claimants, the Distribution Agent will endeavor to distribute funds directly to
17 the beneficial accountholders of such retirement plans if the information required for such a distribution is
18 known to or provided to the Distribution Agent.

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

20 33. Upon receipt of the monies in the Fair Fund in this matter, the Distribution Agent shall
21 provide sufficient evidence of the receipt of the funds and deposit these monies in a bank account as
22 described below:

- 23 a. The bank account will be maintained at a U.S. commercial bank ("Bank") not
24 unacceptable to Commission staff.
- 25 b. The Distribution Agent shall then file the signed receipt with the Court and
26 supply a copy of the receipt to counsel for the Commission in this matter within
27 ten (10) business days of receipt of the monies.

28

- 1 c. Pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by
2 the staff of the Commission, the Distribution Agent and the Bank shall establish
3 an escrow account in the name of and bearing the Employer Identification
4 Number (“EIN”) of the QSF (as defined below), as custodian for the distributees
5 of the Distribution Plan. The name of each account shall be in the following
6 form: “SEC v. Diamond Foods, Inc.” as custodian for the benefit of investors
7 allocated a distribution from the Distribution Plan in SEC v. Diamond Foods,
8 Inc., Case No. **3:14-CV-00123-WHA** (D. N.D. Ca.) (the “Fair Fund Escrow
9 Account” or “Escrow Account”). The Distribution Agent and the Bank shall
10 also establish a separate deposit account (e.g. controlled distribution account,
11 managed distribution account, linking checking and investment account) (the
12 “Distribution Account”) titled as set forth above for the purpose of funding
13 checks to be distributed to investors by the Distribution Agent pursuant to the
14 Distribution Plan.
- 15 d. All funds shall remain in the Escrow Account, separate from bank assets,
16 pursuant to the Escrow Agreement until needed to satisfy a presented check.
17 Presented checks will be subject to “positive pay” controls before they are
18 honored by the bank, at which time funds will be transferred from the Escrow
19 Account to the Distribution Account to pay the approved checks.
- 20 e. During the term of the Escrow Agreement, if invested, the Fair Fund Escrow
21 Account shall be invested and reinvested in short-term U.S. Treasury securities
22 backed by the full faith and credit of the United States Government (“U.S.
23 Government”) or an agency thereof, of a type and term necessary to meet the
24 cash liquidity requirements for payments to Eligible Claimants, tax obligations
25 and/or fees and expenses of the Tax Administrator and Distribution Agent,
26 including investment or reinvestment in a bank account insured by the Federal
27 Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in
28 AAA-rated Money Market Mutual Funds registered under the Investment

1 Company Act of 1940 that directly invest in short term U.S. Treasury securities
2 and obligations, all backed by the full faith and credit of the U.S. Government;
3 provided, however, that the AAA-rated Money Market Mutual Funds'
4 investments in short term U.S. Treasury securities will not be made through
5 repurchase agreements or other derivative products.

6 f. All interest earned will accrue for the benefit of the Fair Fund.

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

11 h. In consultation with Commission staff, the Distribution Agent shall work with
12 the Bank on an ongoing basis to determine an allocation of funds between the
13 escrow and the deposit accounts that will preserve earnings, if possible, without
14 compromising safety and soundness by providing maximum protection for the
15 Fair Fund under the full faith and credit of the U.S. Government and/or the
16 maximum available FDIC deposit insurance and pass-through deposit insurance.

17 **V. Distribution**

18 34. The Net Available Fair Fund will be distributed to Eligible Claimants as provided under the
19 terms of this Distribution Plan. An Eligible Claimant's Recognized Loss, as determined in accordance
20 with the Plan of Allocation contained in Appendix I to this Distribution Plan, will be used to determine
21 the amount of their Distribution Payment.

22 35. The Distribution Agent will disburse the Net Available Fair Fund to all Eligible Claimants,
23 in one or more tranches, once all Proof of Claim Forms have been processed and all Potential Claimants
24 whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the
25 opportunity to cure pursuant to the procedures set forth herein.

26 36. Within forty-five (45) days following the expiration date of the last Rejection Notice, the
27 Distribution Agent will prepare a list of all Eligible Claimants, the Eligible Loss Amount of each Eligible
28 Claimant, and the Distribution Payment of each Eligible Claimant ("Payment File"). The Distribution

1 Agent shall provide the Final Payee List to Commission staff with a reasonable assurances letter as to the
2 completeness and accuracy of the Final Payee List and a Declaration describing in sufficient detail the
3 procedures that the Distribution Agent used to develop the Final Payee List. The Distribution Agent will
4 also prepare the relevant materials to effect a distribution, including recommending an estimated
5 distributable amount from the Net Available Fair Fund. The Distribution Agent will retain a prudent
6 reserve to pay any federal, state, or local taxes payable in connection with the Fair Fund as well as fees of
7 the Distribution Agent.

8 37. After receipt and acceptance of the Payment File, the Commission staff will petition the
9 Court for authority to disburse the entire balance of the Net Fair Fund from the Commission to the
10 Distribution Agent for distribution to Eligible Claimants pursuant to the Distribution Plan. In conjunction
11 with any motion seeking approval of a distribution, the Payment File will, upon request, be made
12 available to the Court under seal.

13 38. Following the Court's approval of the Commission's petition for the authority to distribute
14 the Net Available Fair Fund to Eligible Claimants as provided for in this Distribution Plan, the
15 Distribution Agent will commence the distribution to Eligible Claimants as promptly as possible.

16 39. Should the total amount of the Eligible Loss Amounts of all Eligible Claimants exceed the
17 Net Fair Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a pro rata
18 distribution formula. This formula will be the fraction of the Eligible Loss Amount of each Eligible
19 Claimant divided by the aggregate Eligible Loss Amounts of all Eligible Claimants. No Distribution
20 Payment will be made to an otherwise Eligible Claimant unless the amount to be paid equals or exceeds
21 the Distribution *De Minimis* Amount.

22 40. The Distribution Agent in its exclusive discretion may, but will have no obligation to,
23 aggregate accounts held by a person in the same legal capacity in determining Eligible Loss Amounts and
24 Distribution Payment amounts.

25 41. Checks will be issued by the Distribution Agent from the Distribution Account set up at the
26 Bank. Checks will be issued in U.S. dollars and bear a stale date of ninety (90) days from the date of
27 issuance. Accordingly, checks that are not negotiated within this Check-cashing Period will be voided,
28 and the issuing financial institution will be instructed to stop payment on those checks, except as provided

1 below. Where an Eligible Claimant's check is not negotiated within the Check-cashing Period and has
2 been voided by the Distribution Agent, that Eligible Claimant's claim will be extinguished. All such
3 funds will remain in the Fair Fund.

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

- 6 a. A statement characterizing the distribution;
- 7 b. A statement that checks will be void and cannot be reissued after ninety (90) days
8 from the date the original check was issued;
- 9 c. A statement that reissued checks will expire on thirty (30) days from the date of the
10 reissued check;
- 11 d. A statement that the tax treatment of the distribution is the responsibility of each
12 Eligible Claimant and that the Eligible Claimant should consult his or her tax advisor
13 for advice regarding the tax treatment of the distribution; and
- 14 e. Contact information for the Distribution Agent for questions regarding the
15 Distribution Payment.

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

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

26 45. Under no circumstances will the Distribution Agent, its employees, or its agents incur any
27 liability to any Person for making a distribution in accordance with the Order of the Court approving the
28 distribution and the schedules of Eligible Claimants, and all Persons shall be enjoined from taking any

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

6 **VI. Post Distribution**

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

8 46. The Distribution Agent is authorized to reissue checks to Eligible Claimants upon the
9 receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void at thirty
10 (30) days from the reissuance.

11 47. The Distribution Agent will research and attempt to locate all Eligible Claimants whose
12 checks are returned to the Distribution Agent as undeliverable by the USPS. However, the Eligible
13 Claimant has the burden of providing the Distribution Agent with any changes to his or her mailing
14 address. The Distribution Agent will mail a reissued check to the updated address, subject to the time
15 limits detailed herein.

16 48. In cases where an Eligible Claimant is unable to endorse a Distribution Payment (e.g., as the
17 result of a name change because of marriage or divorce, or as the result of death), any request by an
18 Eligible Claimant or a lawful representative for reissuance of a Distribution Payment in a different name
19 must be documented to the satisfaction of the Distribution Agent. If such change is properly documented
20 in the sole discretion of the Distribution Agent, the Distribution Agent will issue an appropriately redrawn
21 Distribution Payment, subject to the time limits detailed herein.

22 49. The Distribution Agent will make reasonable efforts to contact Eligible Claimants to follow
23 up on the status of un-cashed Distribution Payments per thresholds agreed to with the Commission staff
24 (other than those returned as “undeliverable”) and take appropriate action to follow up on the status of un-
25 cashed checks at the request of Commission staff. The Distribution Agent may reissue such checks,
26 subject to the time limits detailed herein.

27 **B. Disposition of Remaining Funds**

28

1 50. If, after the distribution is complete, all tax obligations of the Fair Fund have been satisfied,
2 and funds remain in the Fair Fund, for the remaining funds shall be paid to the Commission for transfer to
3 the United States Treasury upon receipt of written instructions by the Distribution Agent.

4 **VII. The Distribution Agent**

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

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

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

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

26 55. The Distribution Agent will be entitled to reasonable administrative fees and expenses in
27 connection with the administration and distribution of the Fair Fund (including any such fees and
28 expenses incurred by agents, consultants or third parties retained by the Distribution Agent in furtherance

1 of its duties). The Distribution Agent will invoice all fees and expenses for the administration and
2 distribution of the Fair Fund on a monthly basis directly to Commission staff and the fees shall be paid by
3 the Fair Fund.

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

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

15 **VIII. Tax Compliance**

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

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

26 59. When the Fair Fund is transferred to the Escrow Account for distribution, the Distribution
27 Agent will tender to the Tax Administrator funds necessary to pay taxes upon the request of the Tax
28

1 Administrator. The SEC will approve and arrange payment of the tax obligations without further
2 approval of the Court.

3 60. All fees, costs, and expenses of the Tax Administrator will be paid by the Fair Fund as part
4 of the cost of the administration of the Fair Fund. Any taxes on interest earned by the Fair Fund will be
5 paid by the Fair Fund.

6 **IX. Fair Fund Reporting and Accounting**

7 61. The Distribution Agent will provide to Commission staff for filing with the Court a
8 quarterly status report within forty-five (45) days of Court approval of this Distribution Plan, and shall
9 provide additional reports for filing and quarterly account statements within twenty (20) days after the end
10 of every quarter thereafter as detailed below.

11 62. Once the money has been transferred to the Escrow Account, a quarterly account statement,
12 in a format to be provided by the Commission staff, shall be submitted with the status report by the
13 Distribution Agent.

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

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

23 64. The Distribution Agent will prepare a final report and final accounting, in a format to be
24 provided by the Commission staff, when the Fair Fund administration is complete. In compiling the final
25 accounting, the Distribution Agent will coordinate with the Tax Administrator. The Commission staff
26 will file the final report and final accounting with the Court for approval.

27

28

1 65. Commission staff, or other relevant party, shall provide the Distribution Agent with any and
2 all account information relating to the Fair Fund that may be required to meet reporting obligations;
3 including providing copies of any account statements that the Distribution Agent may request.

4 **X. Termination of the Fair Fund**

5 66. Once all Distribution Payments have been negotiated or voided, any funds remaining in the
6 Escrow and Distribution Accounts will be transferred to the Commission.

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

- 9 a. A final report and accounting has been submitted to and approved by the Court;
10 b. All taxes have been paid; and
11 c. All remaining funds have been transferred to the Commission.

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

14 **XI. Limitation of Liability**

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

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

27 71. The submission of the Proof of Claim Form and the receipt and acceptance of a distribution
28 by an Eligible Claimant will not affect an Eligible Claimant's rights and claims as against any party (other

1 | than the Distribution Agent), including, without limitation, Diamond Foods and Diamond Foods' past or
2 | present directors, officers, employees, affiliates, nominees, creditors, advisors and agents.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Appendix I – Diamond Foods Fair Fund Plan of Allocation**Overview**

Shares of the Eligible Securities purchased in the United States during the Relevant Period, defined as February 26, 2010 to February 9, 2012, inclusive of both dates, are eligible for a distribution under this plan. A Distribution Payment will be calculated for each Eligible Claimant, according to the methodology described below based on transactions as listed in the Proof of Claim Form and for which adequate documentation is provided.

Calculation of Recognized Loss Amount on a Transaction

The Recognized Loss Amount on a transaction depends on the date the shares were purchased and the date the shares were sold. Commission staff calculated stock price drops associated with disclosures of the misconduct alleged in the Complaint on four dates (“Event Days”) during the Relevant Period.

For shares not purchased during the Relevant Period, the Recognized Loss Amount is \$0.00.

For shares purchased during the Relevant Period, Table 1 below provides the Incremental Loss Amount for various purchase dates and holding periods. For a share purchased during the Relevant Period and prior to an Event Date and sold *after* that Event Date (but not *on* an event day), the Recognized Loss Amount will be the sum of the Incremental Loss Amounts for the Event Dates that fall between the purchase and sale dates. For a share purchased before an Event Date and sold before the same Event Date, the Incremental Loss Amount is zero.

Table 1 – Incremental Loss Amounts per Share

Event Number	Event Date	Incremental Loss Amount	Previous Trading Day	Previous Trading Day Close
1	09/26/2011	\$6.60	09/23/2011	\$90.37
2	11/02/2011	\$12.04	11/01/2011	\$64.12
3	11/07/2011	\$7.64	11/04/2012	\$46.40
4	02/09/2012	\$13.64	02/08/2012	\$36.66

A share purchased during the Relevant Period and sold on an Event Day has a Incremental Loss Amount on that Event Date that is the *lesser of*:

- i. the Incremental Loss Amount listed in Table 1 for that Event Day, and
- ii. the Previous Trading Day Close listed for that Event Day in Table 1 minus the sale price received on the Event Day. (That is, a share sold on an Event Day may have avoided some of the full day’s loss, so the recovery will be less than the Per Share Recoverable Loss.)

The following examples demonstrate the calculation of Recognized Loss Amount.

- a) A share purchased on 09/06/2011 (prior to Event Number 1) and sold on 9/30/2011 (after Event Number 1, but prior to Event Number 2) has a Recognized Loss Amount of \$6.60.
- b) A share purchased on 09/06/2011 (prior to Event Number 1) and sold on 12/20/2011 (after Event Number 3, but prior to Event Number 4) has a Recognized Loss Amount of $\$6.60 + \$12.04 + \$7.64 = \26.28 .

- 1 c) A share purchased on 10/11/2011 (after Event Number 1) and sold on 12/20/2011 (after Event
Number 3, but prior to Event Number 4) has a Recognized Loss Amount of $\$12.04 + \$7.64 =$
2 $\$19.68$.
- 3 d) A share purchased on 10/11/2011 (after Event Number 1) and sold on 11/07/2011 (on Event
Number 3) at $\$40.00$ per share has a Recognized Loss Amount of $\$12.04 + (\$46.40 - \$40.00) =$
4 $\$18.44$, because the difference between the sale price on the day of Event Number 3 and the
previous day's closing price is smaller than $\$7.64$.
- 5 e) A share purchased on 11/04/2011 (after Event Number 2) and held after 02/09/2012 (after Event
Number 4) has a Recognized Loss Amount of $\$7.64 + \$13.64 = \$21.28$.
- 6 f) A share purchased on 10/11/2011 (after Event Number 1) and sold on 10/14/2011 (prior to Event
7 Number 2) has a Recognized Loss Amount of $\$0.00$.

8
9 **FIFO Methodology:** If an Eligible Claimant held Eligible Securities before the beginning of the
Relevant Period and/or made multiple purchases, acquisitions, or sales during the Relevant Period, all
10 purchases and acquisitions shall be matched to sales on a "first-in-first-out" (or "FIFO") basis. Sales
of shares will be matched in chronological order first against the closing position the day before the
beginning of the Relevant Period, until that day's closing position has been exhausted; such sales will
11 not be eligible for recovery under this plan. Then, remaining sales after the beginning of the Relevant
Period will be matched in chronological order against purchases and acquisitions made in the
12 Relevant Period until all such shares have been exhausted.

13 **Calculation of Recognized Claim and Distribution Payment**

14 An Eligible Claimant's Recognized Loss Amounts will be summed across all the Eligible Claimant's
transactions to arrive at a Recognized Claim Amount, where transactions resulting in a gain will be
15 netted against transactions resulting in a loss. The Recognized Claim Amount is subject to the market
loss limitation described below.

16 To the extent there are sufficient funds in the Distribution Fund, each Eligible Claimant shall be
17 allocated a Distribution Payment equal to his, her or its Recognized Claim, subject to the minimum
distribution provision below. In no event will an Eligible Claimant receive a Distribution Payment
18 exceeding his, her or its Recognized Claim.

19 Should the sum of Recognized Claims of all Eligible Claimants exceed the Distribution Fund, the
Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution
20 formula. Each Eligible Claimant's *Pro Rata* Share of the Fair Fund will be calculated as the Eligible
Claimant's Recognized Claim divided by the sum of Recognized Claims of all Eligible Claimants.
21 The Distribution Payment will be calculated as the Eligible Claimant's *Pro Rata* Share multiplied by
the Net Fair Fund, subject to the minimum distribution provision below.

22 If an Eligible Claimant has a calculated Distribution Payment that is less than the Minimum
23 Distribution Amount that Eligible Claimant will not receive a distribution. The Distribution Fund will
be distributed to other Eligible Claimants whose Distribution Payments are greater than the Minimum
24 Distribution Amount.

25 **General Provisions**

- 26 a) All prices mentioned in the calculation of Recognized Loss Amounts exclude all fees and
commissions. Purchases or acquisitions and sales of Eligible Securities shall be deemed to
27 have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment"
date.
- 28 b) Acquisitions: Subject to the limitations set forth in the Distribution Plan, the receipt or grant
by gift, inheritance or operation of law of Eligible Securities during the Relevant Period shall

1 not be deemed a purchase, acquisition or sale of these shares of Eligible Securities for the
 2 calculation of an Eligible Claimant's Recognized Claim Amount, nor shall the receipt or grant
 3 be deemed an assignment of any claim relating to the purchase/acquisition of such shares of
 4 Eligible Securities unless (i) the donor or decedent purchased or acquired such shares of
 5 Eligible Securities in the open market during the Relevant Period; (ii) no Proof of Claim was
 6 submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with
 7 respect to such shares of Eligible Securities; and (iii) it is specifically so provided in the
 8 instrument of gift or assignment. In such instances, the recipient must provide documentation
 9 of the original open market purchase in addition to the transfer.

10 c) Short Sales: In the event that a claimant has an opening short position in Eligible Securities,
 11 the earliest Relevant Period purchases or acquisitions shall be matched against such opening
 12 short position, and not entitled to a recovery and will not contribute to a market gain or loss,
 13 until that short position is fully covered. Any gains from short selling shall offset any losses
 14 on other transactions. Any losses from short selling will have a Recognized Loss per Share of
 15 \$0.00. The date of a short sale is deemed to be the date of sale of Eligible Securities. The date
 16 of covering a short sale is deemed to be the date of purchase or acquisition of the Eligible
 17 Securities.

18 d) Market Loss Limitation: If the Eligible Claimant had a market gain from the total of all
 19 transactions in Diamond common stock during the Relevant Period, the value of the
 20 Recognized Claim will be zero. The Claims Administrator shall determine the claimant's
 21 market gain or loss with respect to his, her, or its overall transactions in Diamond Foods
 22 common stock during the Relevant Period as the difference between (i) the Total Purchase
 23 Amount of such shares³ and (ii) the sum of the Total Sales Proceeds⁴ and Total Holding Value
 24 of such shares.⁵

25
26
27 ³ The "Total Purchase Amount" is the total amount the claimant paid, excluding commissions and other charges.

28 ⁴ The Claims Administrator shall match any sales of shares, first against the claimant's opening position and the proceeds
 of those sales will not be considered for purposes of calculating market gains or losses. The total amount received,
 excluding commissions and other charges, for the remaining sales shall be the "Total Sales Proceeds."

⁵ Shares still held as of the close of trading on February 9, 2012 shall be ascribed a value of \$23.13 per share.