

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION**

IN THE MATTER OF:

FIDELITY CO-OPERATIVE BANK

E-2014-0073

Independent Claims Administrator's Massachusetts Distribution Plan  
Submitted by: Peter I. Resnick and Marc C. Mercier, Grant Thornton LLP

I. INTRODUCTION

A. Background and Instruction under the Order

1. On September 22, 2014 Fidelity Co-operative Bank ("FCB") and the Secretary of the Commonwealth of Massachusetts, Securities Division ("the Division") entered into a Consent Order arising out of an investigation initiated by the Division concerning FCB's banking relationship with TelexFree. Pursuant to the Consent Order, FCB established a Massachusetts Victim Relief Fund and retained Grant Thornton as Independent Claims Administrator ("ICA").

B. The Division's Order states that the ICA:

shall determine an independent plan of distribution (hereinafter "Massachusetts Distribution Plan"), not unacceptable to the Division, for identifying, calculating, and distributing payments to Massachusetts victims (hereinafter "Massachusetts Victims"). Massachusetts Victims shall include all individuals residing in Massachusetts who invested in TelexFree and are determined by the Independent Claims Administrator to have valid claims (hereinafter "Final Approved Claims").

II. OVERVIEW

A. This Massachusetts Distribution Plan ("MDP or "Plan") shall become effective upon its adoption by Order of the Division.

B. This MDP describes three main activities required for the distribution:

1. The method for identifying Massachusetts Victims qualified to receive a distribution ("Eligible Participants");

2. The steps for determining the amount to be distributed to each Eligible Participant;
3. The oversight, accounting, and public information elements of the process.

C. There are inevitable tradeoffs between the goal of distributing monies to Eligible Participants quickly and the practical constraints imposed by a wide variety of factors, including significant limitations of available independent data with respect to the identification of potential Eligible Participants and their losses, if any, and the variety of ways in which they may have participated in the TelexFree programs. This Plan has considered these tradeoffs carefully.

### III. RULES AND PROCEDURES FOR DETERMINING ELEGIBLE PARTICIPANTS

A. On the basis of information obtained by the ICA and review and analysis of the available records, the ICA will identify potential claimants (“Potential Claimants”). Potential Claimants shall include persons who participated in TelexFree programs for whom the ICA is able to obtain a name and Massachusetts address based on information provided by the Division or otherwise under the terms of this Plan.

B. In general, the Plan attempts to treat all Potential Claimants similarly. However, the ICA acknowledges that the records available to the ICA are incomplete and/or unreliable. For example, individuals reflected as participants within TelexFree’s records may have participated in TelexFree’s programs on behalf of other individuals, who may have lost money but whose names do not appear in the records available to the ICA, and some individuals used multiple user names that appear as multiple individuals but may in fact reflect a single individual’s participation. Further, the ICA is unable to calculate actual losses because, among other things, information available to the ICA does not include 1) the entire time period TelexFree operated or 2) complete records of all transactions during any time period. In addition, the ICA did not have access to information potentially available from third party sources.

C. The ICA has identified three categories of Eligible Participants, as follows:

1. “Group A Participants” are those Massachusetts residents who the ICA determined as having participated in TelexFree’s programs based on information provided to the ICA by the Division, regardless of whether such persons submitted a claim to the Division pursuant to the Division’s existing claims process.
2. “Group B Participants” are those Massachusetts residents who, prior to the date of the Order adopting this Plan, submitted a claim to the Division pursuant to the Division’s existing claims process, for whom the ICA was not able to determine as having participated in TelexFree’s programs based on other information provided to the ICA by the Division, but who replied to the Inquiry Process established by the ICA with qualified Valid Evidence of participation in TelexFree programs, as defined below.
3. “Group C Participants” are those Massachusetts residents who, after the date of the Order adopting this Plan, submit a Valid Claim to the ICA, as defined below.

D. The Division shall cease accepting claims from Potential Claimants pursuant to the Division's existing claim process on the date of the Order adopting this Plan.

E. The following categories of Potential Claimants shall be excluded from the definition of Eligible Participants ("Excluded Claimants"): 1) Potential Claimants who submitted a claim to the Division pursuant to the Division's existing claims process, relating to participation in one or more TelexFree Wholesale Packages, but who A) were not confirmed by the ICA as having participated in TelexFree's programs based on other information provided to the ICA by the Division; and B) did not reply to the Inquiry Process established by the ICA with qualified Valid Evidence of participation in TelexFree programs, as defined below; 2) Potential Claimants who are not Massachusetts residents; 3) Potential Claimants who submit a claim to the Division pursuant to the Division's existing claims process after the date of the Order adopting this Plan and are not otherwise included within another category of Eligible Participants under this Plan; 4) Potential Claimants who are named as parties in any Securities and Exchange Commission or United States Attorney's Office matter related to TelexFree; 5) Potential Claimants who are subject to any public or private inquiry or investigation related to TelexFree by the Division; and 6) Potential Claimants who are otherwise disqualified from eligibility at the discretion of the ICA. Excluded Claimants shall not be allocated, nor distributed, any amounts from the Massachusetts Victim Relief Fund.

F. The Division shall provide to the ICA a list of individuals that the Division has determined, in its sole discretion, shall be excluded from the list of Eligible Participants pursuant to paragraphs III.E(4) and III.E(5) herein.

G. Inquiry Process

1. The ICA will send an Inquiry Letter to Group B Participants. Such Inquiry Letter shall also be translated into Portuguese. The Inquiry Letter will notify the Group B Participants of the requirement to submit Valid Evidence that such person was the owner of one of more TelexFree Wholesale Packages in order to become an Eligible Participant. The qualification of Valid Evidence shall be in the sole discretion of the ICA, however the following documents are examples of those that may serve as Valid Evidence:

- a) A copy of an email, or other communication, from TelexFree confirming the ownership of a TelexFree Wholesale Package. The document must specifically name the individual presenting such document as proof.
- b) An invoice from TelexFree requesting payment for a TelexFree Wholesale Package, containing the name of the individual offering such document as evidence, and proof of payment, such as a cleared check or credit card statement indicating payment, in the amount indicated on the invoice, specifically naming the individual presenting such document.

2. The ICA shall accept submissions of proposed Valid Evidence for a period of 120 days following the date of the Order adopting this Plan.

3. Group B Participants who choose to submit evidence to the ICA of their participation in TelexFree programs shall be required to certify as to the authenticity of any document or information submitted.

#### H. New Claims Process

1. For a period of 120 days from the date of the Order adopting this Plan, the ICA will accept new claims from Massachusetts residents who participated in TelexFree's programs.
2. A new claim will be deemed to be a Valid Claim if it includes:
  - a) Name and a valid Massachusetts address,
  - b) A certification that the claimant participated in one or more TelexFree Wholesale Packages and suffered a loss, and
  - c) Valid Evidence as described above, including a certification as to the authenticity of any document or information submitted.
3. The ICA shall create a form for the submission of a new claim and will make that form available online or in hard copy upon request. Such form shall also be made available in Portuguese.
4. The determination of whether a new claim is a Valid Claim shall rest in the sole discretion of the ICA.

#### IV. RULES AND PROCEDURES FOR THE DISTRIBUTION PROCESS

- A. The ICA shall determine an Initial Distribution amount, which shall be equal to the available funds in the Massachusetts Victim Relief Fund, including accrued interest, less a reserve that shall be determined in the sole discretion of the ICA but which shall be sufficient to make further distributions contemplated by this Plan ("Reserve").
- B. Within 30 days from the date of the Order adopting this Plan, or as soon as commercially practicable thereafter, the ICA shall cause to be sent to all Group A Participants: a check reflecting a pro-rata share of the Initial Distribution amount with a letter including a description of this Plan, instructions for requesting a copy of the Plan, and information for Potential Claimants who may have questions regarding the Plan.
- C. Within 60 days from the date of the Order adopting this Plan, the ICA shall cause the Inquiry Letter described above to be sent to Massachusetts residents who, prior to the date of the Order adopting this Plan, submitted a claim to the Division pursuant to the Division's existing claims process, but who the ICA was not able to determine as having participated in TelexFree's programs based on other information provided to the ICA by the Division.
- D. Within 60 days of the deadline for the submission of proposed Valid Evidence and New Claims, as described above, the ICA shall make its final determination as to Group B and Group C Participants ("Final Determination Date").
- E. Within 30 days of the Final Determination Date the ICA shall determine: 1) the Remaining Distribution Amount and 2) Final Pro-rata Distribution Share per Eligible Participant.

The Remaining Distribution Amount shall reflect all funds then remaining in the Massachusetts Victim Relief Fund, including the Reserve, accrued interest and uncashed checks. The Final Pro-rata Distribution Share shall be the sum of the Initial Distribution Amount and the Remaining Distribution Amount, divided by the total number of Eligible Participants as of that date.

F. Upon determination of the Final Pro-rata Distribution Share, the ICA shall cause to be sent:

1. A check to each Group B and Group C Participants equal to the Final Pro-rata Distribution Share.
2. A check to each Group A Participants, as of that date, in an amount equal to the Final Pro-rata Distribution Share less the Initial Pro-rata Distribution Share.
3. A letter to each individual who submitted proposed Valid Evidence or a new claim but who the ICA determined is not an Eligible Participant.

G. All checks shall bear a stale date of 90 days from the date of issuance. Checks not negotiated within the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Those amounts shall be returned to the Massachusetts Victim Relief Fund. Eligible Participants who do not cash their check within 90 days from the date of issuance shall no longer be Eligible Participants.

H. In the view of the ICA, this methodology constitutes a fair and reasonable allocation of the Massachusetts Victim Relief Fund. Based upon this methodology, it is anticipated that there will be multiple stages of distribution, which will take place under the Rules and Procedures outlined above.

I. If any mailing is returned as undeliverable, the ICA will make reasonable efforts to ascertain a correct mailing address within thirty (30) days of the receipt of the returned documents. If the ICA, despite reasonable efforts, is unable to find a Potential Claimant's correct address, the Potential Claimant will be excluded from the pool of Eligible Participants.

J. At the request of the Division, any funds remaining in the Massachusetts Victim Relief Fund after all checks have been mailed pursuant to this Plan and the stale date has passed ("Residual Amounts") shall be distributed to the Worker and Small Investor Fund pursuant to M.G.L. ch. 10 §68.

## V. ADMINISTRATORS OF THE PLAN OF DISTRIBUTION

A. Independent Claims Administrator

1. Peter I. Resnick, Partner, Grant Thornton LLP, will serve as the Independent Claims Administrator. In carrying out his duties, the ICA may be assisted by other employees of Grant Thornton LLP. For the purpose of carrying out ministerial functions of this Plan, including executing the mailings, Grant Thornton LLP may retain and rely on outside vendors.

2. The ICA will, among other things: oversee the administration of this Plan; obtain and archive mailing information of Eligible Participants; distribute monies from the Massachusetts Victim Relief Fund in accordance with this Plan; and prepare a final accounting.

## VI. TAX IMPLICATIONS OF THE DISTRIBUTION PROCESS

A. Based upon the anticipated size of each Eligible Participant's total distribution, FCB is not obligated to issue 1099-M forms to recipients. This fact does not determine whether each recipient might have some personal tax obligation resulting from the distribution. Neither this Plan, nor the ICA, nor FCB, is providing tax advice to parties receiving distributions. All recipients should consult their own tax advisors about their obligations with respect to the distributions.

B. Monies under the Order are currently on deposit in The Massachusetts Victim Relief Fund, this Fund constitutes a Qualified Settlement Fund ("QSF") under section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§1.468B-1 through 1.468B-5.

## VII. TIMING OF THE DISTRIBUTION PROCESS

A. This Massachusetts Victim Relief Fund will terminate 30 days after the final distribution of funds to Eligible Participants, the distribution of the Residual Amount, and the final accounting of the ICA has been submitted to the Division.

B. The ICA at his discretion may grant an extension of any of the deadlines described in this Plan for good cause.

C. The ICA will inform the Division of any material changes in the Plan, and will obtain approval prior to their implementation.

## VIII. DISCLOSURE, APPEALS AND OVERSIGHT

### A. Public Information Program

1. All payments shall be preceded by or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that checks will be void 90 days after issuance; and (c) the name of the person to contact, to be used in the event of any questions regarding the distribution. Such communications will clearly indicate that the money is being distributed from the Commonwealth of Massachusetts. Other proposed written and online communications relating to the distribution will be pre-approved by the ICA.

2. The ICA will provide customer support and communications programs which will become active at least by the time the first distribution occurs. These services will include a website available to the public.

B. The ICA will submit a final accounting for review and approval of the Division prior to the termination of the Plan and discharge of the ICA.

C. For monies to be paid, the Division's acceptance of a validated list of payees and payment amounts (a "Validated Payment File") will be a condition precedent to disbursement of funds under this Plan. The ICA will submit a Validated Payment File to the Division who will authorize disbursement. The payees and amounts will be certified at the ICA's discretion. The certification will state that the Validated Payment File was compiled in accordance with the Plan and provides all information necessary to make a disbursement to each payee. The Division will direct the release of funds to the bank account established by the Fund Administrator based upon the Validated Payment File and representation by the ICA that the checks/wires will be issued the next business day.

D. The ICA, Fidelity Co-operative Bank, and/or each of their designees, agents and assistants, shall be entitled to rely on any Orders issued in the proceedings by the Division, and may not be held liable, including to any claimant, Potential Claimant, Eligible Participant, customer of TelexFree, or any other person, for any act or omission in connection with this Plan, except upon a finding that such act or omission was caused by such party's intentional misconduct or reckless failure to comply with the terms of this Plan.

A handwritten signature in cursive script that reads "Peter Resnick". The signature is written in black ink on a light-colored background.

Submitted on: July 3, 2015

By: \_\_\_\_\_  
Peter I. Resnick