



Jeffrey Plotkin as Distribution Agent to prepare, in consultation with the staff of the Commission, a plan of distribution for the Fair Fund pursuant to which monies in the Fair Fund will be distributed to investors harmed by the violations alleged in the Complaint. The Order also authorizes the Distribution Agent to implement the distribution of the Fair Fund to approved claimants in coordination with the staff of the Commission, pursuant to the Plan of Distribution, subject to oversight by the Court.

The Distribution Agent, in consultation with staff of the Commission, prepared this Plan of Distribution, and the Commission submitted the Plan of Distribution to this Court for its approval.

This Court hereby approves this Plan of Distribution.

## ARTICLE I

### DEFINITIONS

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

1.1 “Affiliate” shall have the meaning set forth in Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. § 101(2).

1.2 “Approved Claim” shall mean the final amount of an Eligible Claimant’s asserted claim that is ultimately approved for payment pursuant to the Distribution Plan. The minimum payment threshold for an Approved Claim shall be the Minimum Distribution Amount as set forth in Section 1.21 below; claims that would result in a payment of less than the Minimum Distribution Amount shall not be approved for payment.

1.3 “Available Distribution” shall mean the Fair Fund, less any amounts expended or to be expended for administering the Fair Fund (*e.g.*, reasonable fees and expenses incurred or to be incurred in administering this Distribution Plan, tax payments, reserves for taxes, and fees of the Tax Administrator).

1.4 “Claims Administrator” shall mean The Garden City Group, Inc., the claims administrator chosen to assist the Distribution Agent with the administration and distribution of the Fair Fund.

1.5 “Claims Bar Date” shall mean the date established in accordance with this Distribution Plan by which a Potentially Eligible Claimant’s Proof of Claim Form must be received by the Distribution Agent to avoid the barring of any right of the Potentially Eligible Claimant to participate in any distribution from the Fair Fund. The Claims Bar Date shall be one hundred and twenty (120) days after the Distribution Agent’s initial mailing of Claims Packets to Potentially Eligible Claimants as set forth in Section 3.15(a) below.

1.6 “Claim Deficiency Notice” means the notice sent by the Distribution Agent to a Potentially Eligible Claimant whose claim is deficient in one or more ways, *e.g.*, failure to provide required information or documentation. The Claim Deficiency Notice shall advise the

Potentially Eligible Claimant of the reason or reasons for the deficiency and the opportunity to cure such deficiency. A Claim Deficiency Notice shall be provided no later than forty-five (45) days after the Claims Bar Date.

1.7 “Claims Determination Date” shall mean the date on or before which the Distribution Agent is to reach his determination concerning the validity and amount of each Potentially Eligible Claimant’s claim. Except as otherwise provided herein, the Claims Determination Date shall be no later than one hundred and twenty (120) days following the Claims Bar Date.

1.8 “Claims Packet” shall mean the materials relevant to submitting a claim that will be provided to Potentially Eligible Claimants known to the Distribution Agent or to those people who request such materials. The Distribution Agent, in consultation with the staff of the Commission, shall prepare the Claims Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and a Proof of Claim Form (together with instructions for completion of the Proof of Claim Form).

1.9 “Class Action” shall mean *In re Network Associates, Inc. II Securities Litigation*, CV-00-4849-MJJ (N.D. Cal.). The court in that action approved a settlement creating a \$70,000,000 settlement fund, the net proceeds of which were distributed on a *pro rata* basis to “authorized claimants” (as defined in the Notice of Pendency and Proposed Settlement of Class Action dated October 23, 2003) who purchased McAfee Common Stock during the period from trade date April 15, 1999 through trade date December 26, 2000, and who held such shares through trade date December 26, 2000. The Claims Administrator in the Class Action is the same Claims Administrator for this Distribution Plan.

1.10 “Class Action Authorized Claimant” shall mean a Potentially Eligible Claimant whose claim was authorized in the Class Action. A Class Action Authorized Claimant is automatically deemed an Eligible Claimant under this Distribution Plan with respect only to those McAfee Common Stock transactions for which a claim was previously authorized in the Class Action. A Class Action Authorized Claimant is not automatically deemed an Eligible Claimant in this Distribution Plan with respect to McAfee Common Stock transactions for which a claim was denied in whole or in part by the Claims Administrator in the Class Action for any reason or for which no claim was submitted to the Claims Administrator in the Class Action.

1.11 References to “days” shall mean calendar days.

1.12 “Determination Notice” shall mean the notice sent by the Distribution Agent to a Potentially Eligible Claimant stating the Distribution Agent’s determination of the validity of the claim of the Potentially Eligible Claimant.

1.13 “Distribution Agent” shall mean Jeffrey Plotkin of the law firm Day Pitney LLP who is the person responsible for administering the Fair Fund, in accordance with the terms of this Distribution Plan and the Court’s orders, as well as his partners, associates, counsel, consultants, accountants and other agents, including the Claims Administrator and the Independent Outside Accounting Firm.

1.14 “Distribution Plan” shall mean this distribution plan approved by the Court.

1.15 “Distribution Plan Notice” shall mean the notice given to Potentially Eligible Claimants of their potential right to participate in the distribution of the Fair Fund and their obligation to file a Proof of Claim Form in order to so participate. The Distribution Agent, in consultation with the staff of the Commission, shall design the Distribution Plan Notice, consistent with the provisions of this Distribution Plan, and such notice shall include, at a minimum, a statement that the Fair Fund relates to purchases of McAfee Common Stock during the Recovery Period, the means of obtaining Claims Packets (including Proof of Claim Forms), instructions for submitting Proof of Claim Forms, and the Claims Bar Date. The Distribution Plan Notice shall advise Potentially Eligible Claimants that by participating in the distribution of the Fair Fund, they will not be releasing any rights or claims they may have against any party, including, but not limited to, McAfee and McAfee’s past and present directors, officers, advisors and agents (other than with respect to the Distribution Agent).

1.16 “Eligible Claimant” shall mean a Potentially Eligible Claimant filing a Proof of Claim Form with the Distribution Agent on or before the Claims Bar Date who is finally determined by the Distribution Agent to be eligible for a distribution from the Fair Fund as provided herein because he or she purchased and held McAfee Common Stock during the Recovery Period. An Eligible Claimant shall also mean a Class Action Authorized Claimant. An “Eligible Claimant” in no event shall include:

(a) Any director or officer, or former director or officer, of McAfee (f/k/a Network Associates, Inc.) or any of its past or present Affiliates (or any of his or her Affiliates, assigns, heirs, distributees, spouses, parents, children, or controlled entities) who served in such capacity on or after the commencement of the Recovery Period;

(b) Any employee of McAfee (f/k/a Network Associates, Inc.) or of any of its past or present Affiliates who has been terminated for cause in connection with the violations alleged in the Commission’s Complaint in this action or any related Commission action, or who was otherwise terminated or has resigned in connection with the violations alleged in the Commission’s Complaint in this action or any related Commission action (or any of such employee’s Affiliates, assigns, heirs, distributees, spouses, parents, children, or controlled entities);

(c) Any defendant in any class action lawsuit related to the violations alleged in the Commission’s Complaint in this action or any related Commission action (or any of such defendant’s Affiliates, assigns, heirs, distributees, spouses, parents, children, or controlled entities), unless and until such defendant is found not liable in all such civil suits prior to the Claims Bar Date, and proof of the finding(s) is included in such defendant’s timely filed Proof of Claim Form;

(d) 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, assigns, heirs, distributees, spouses, parents, children, or controlled entities);

(e) Any Person who assigned that Person’s right to obtain a recovery in the Commission’s lawsuit against McAfee;

(f) Any assignee of another Person's right to obtain a recovery in the Commission's lawsuit against McAfee, provided, however, this provision shall not be construed to exclude those Persons who obtained such a right by inheritance or devise.

(g) The Distribution Agent, his immediate family members, and those persons assisting him in his role as Distribution Agent, including the Claims Administrator and its employees, and the Independent Outside Accounting Firm and its employees.

1.17 "Eligible Loss Amount" shall mean the amount of loss an Eligible Claimant has incurred through the purchase of McAfee Common Stock during the Recovery Period. For purposes of this Distribution Plan, and subject to Section 2.4 below, the Eligible Loss Amount for each Eligible Claimant shall be the product of (i) the Recognized Loss Per Share and (ii) the number of shares of McAfee Common Stock that the Eligible Claimant purchased during the period from trade date August 17, 1998 through trade date December 26, 2000, and continuously held or retained through trade date December 26, 2000.

1.18 "Fair Fund" shall refer to all proceeds of McAfee's payment of cash in satisfaction of the Final Judgment, including accumulated interest, appreciation, and earnings thereon, plus any additions thereto as may be provided by future Court order or agreements in related cases or otherwise, less costs, fees, tax payments and other expenses paid or reimbursed pursuant to orders of the Court.

1.19 "Independent Outside Accounting Firm" shall mean Friedman LLP. The Independent Outside Accounting Firm shall, among other duties, if so directed by the Distribution Agent, undertake a review of the Claims Administrator's internal control environment, including its computer programs and databases of information in the areas that are relied upon for processing claims, and provide a report of its findings to the Distribution Agent in the manner prescribed by the Distribution Agent. Upon completion of the independent review, the Independent Outside Accounting Firm shall also provide a complete copy of the report to the staff of the Commission.

1.20 "McAfee Common Stock" shall mean shares of common stock issued by McAfee or by Network Associates, Inc.

1.21 "Minimum Distribution Amount" shall mean a specified dollar amount that an Approved Claim must equal or exceed in order for a distribution to be made to an Eligible Claimant. An Eligible Claimant's Eligible Loss Amount shall be used as the basis for calculating whether an Eligible Claimant holds a claim that meets the Minimum Distribution Amount for an Approved Claim. Upon completion of the processing of all Potentially Eligible Claimants' claims, the Distribution Agent, in consultation with the staff of the Commission, shall recommend a Minimum Distribution Amount, subject to approval by the Court.

1.22 "Person" shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company or governmental entity. All nouns, pronouns and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

1.23 “Potentially Eligible Claimant” shall mean a Person identified by the Distribution Agent as having a possible claim to the Fair Fund under this Distribution Plan, or a Person asserting that he or she has a possible claim to the Fair Fund under this Distribution Plan.

1.24 “Proof of Claim Form” shall mean the form designed by the Distribution Agent in accordance with this Distribution Plan for the filing of proof of a Potentially Eligible Claimant’s claim. The form shall require, at a minimum, that a Potentially Eligible Claimant submit sufficient documentation reflecting the Potentially Eligible Claimant’s purchases and dispositions of McAfee Common Stock during the Recovery Period and the Tax Identification Number of the Potentially Eligible Claimant.

1.25 “Recognized Loss Per Share” shall mean \$7.25 (seven dollars and twenty-five cents). This amount was calculated as outlined in the Declaration of Jeffrey Plotkin, dated February 3, 2009, filed with the Court.

1.26 “Recovery Period,” for the purposes of this Distribution Plan, shall mean the period of time commencing on August 17, 1998 and continuing through the close of the markets on December 26, 2000.

1.27 “Summary Notice” shall mean the notice published in two national publications pursuant to Section 3.15(g) below. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement that the Fair Fund relates to purchases of McAfee Common Stock during the Recovery Period and the means of obtaining a Claims Packet.

1.28 “Tax Administrator” shall mean Damasco & Associates, LLP, the firm appointed by the Court on April 24, 2006.

## ARTICLE II

### ALLOCATION AMONG ELIGIBLE CLAIMANTS

2.1 The Available Distribution shall be allocated among Eligible Claimants who filed Approved Claims as provided under the terms of this Distribution Plan. Payments shall only be made to Eligible Claimants who are entitled to receive a distribution of at least the Minimum Distribution Amount.

2.2 An Eligible Claimant’s Eligible Loss Amount shall be used as the basis for calculating, pursuant to the procedures described below, whether an Eligible Claimant holds a claim that meets the Minimum Distribution Amount for an Approved Claim (*see Sections 1.2, 1.21 and 2.1* above), and the amount of the Approved Claim. As set forth in Section 3.5 below, the Distribution Agent may, but is not required to, aggregate an Eligible Claimant’s accounts for purposes of determining the Eligible Loss Amount and/or to meet the Minimum Distribution Amount.

2.3 Generally, an Eligible Claimant's Eligible Loss Amount is calculated by multiplying the Recognized Loss Per Share by the number of shares of McAfee Common Stock purchased and retained by the claimant during the Recovery Period. (See Section 1.17 above.)

2.4 For Eligible Claimants who held McAfee Common Stock at the beginning of the Recovery Period and made multiple additional purchases and sales of McAfee Common Stock during the Recovery Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases and sales for purposes of calculating the Eligible Loss Amount. Under FIFO, sales of McAfee Common Stock during the Recovery Period will be matched first against McAfee Common Stock holdings at the beginning of the Recovery Period. Such holdings and sales will be excluded from the calculation of the loss. Any remaining sales of McAfee Common Stock during the Recovery Period will then be matched, in chronological order, against McAfee Common Stock purchased during the Recovery Period. Only purchases made during the Recovery Period that remain unmatched with sales made before the end of the Recovery Period shall be included in the calculation of the loss.

2.5 If the Available Distribution is greater than or equal to the aggregate Eligible Loss Amount for all Eligible Claimants with Eligible Loss Amounts of at least the Minimum Distribution Amount, the Distribution Agent shall distribute to each such Eligible Claimant his or her Eligible Loss Amount.

2.6 If the aggregate Eligible Loss Amount for all Eligible Claimants exceeds the Available Distribution, the Distribution Agent shall distribute the Available Distribution *pro rata* to those Eligible Claimants entitled to receive a distribution of at least the Minimum Distribution Amount. That *pro rata* distribution shall be based upon the ratio of the Eligible Loss Amount for each such Eligible Claimant to the aggregate Eligible Loss Amount for all Eligible Claimants. For purposes of this calculation, the Eligible Loss Amounts of Eligible Claimants who are not entitled to receive a distribution of at least the Minimum Distribution Amount shall be excluded.

2.7 If, after the Distribution Agent makes the distribution to Eligible Claimants and pays all approved expenses, funds remain in the Fair Fund in addition to tax reserves, those funds shall be paid to the Commission for transfer to the United States Treasury.

### **ARTICLE III**

#### **ADMINISTRATION OF THE CLAIMS PROCEDURE**

##### **A. General Administrative Provisions**

3.1 The Distribution Agent shall oversee the administration of the claims, procedures and distribution as provided in this Distribution Plan. The Distribution Agent shall review the claim of each Potentially Eligible Claimant and make a determination under the criteria established herein as to the eligibility of each Potentially Eligible Claimant to recover monies and the amount of money to be distributed from the Fair Fund to each Eligible Claimant in accordance with the provisions of this Distribution Plan.

3.2 Any claim asserted by a Potentially Eligible Claimant (except as provided in Section 3.4 below) shall be in writing and shall provide adequate documentary evidence to substantiate the claim, including all documentary evidence which the Distribution Agent deems necessary or appropriate, including but not limited to available account statements and trade confirmations.

3.3 All claims (except as provided in Section 3.4 below) must be verified on the basis of a sworn affidavit or declaration executed by the Potentially Eligible Claimant under penalty of perjury under the laws of the United States.

3.4 A Class Action Authorized Claimant is not required to submit the written claim described in Section 3.2 or the verification described in Section 3.3 with respect only to those McAfee Common Stock transactions for which a claim was previously authorized in the Class Action. A Class Action Authorized Claimant who makes a claim regarding McAfee Common Stock transactions for which a claim was denied in whole or in part by the Claims Administrator in the Class Action for any reason or for which no claim was submitted to the Claims Administrator in the Class Action is required to comply with the requirements set forth in Sections 3.2 and 3.3 with respect to such claim. In addition, if a Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary, a custodian, trustee, or professional investing on behalf of such fund or entity is required to comply with the certification requirement set forth in Section 3.9 below with respect to all claims on behalf of the fund or entity, including those relating to transactions for which a claim was previously authorized in the Class Action.

3.5 In determining the Eligible Loss Amount for an Eligible Claimant, the Distribution Agent may aggregate the accounts held by an Eligible Claimant in accordance with the following aggregation rules:

(a) Each Person who is a Potentially Eligible Claimant and would like to aggregate accounts shall so designate in the Proof of Claim Form, *provided* that a Person may only aggregate accounts as follows:

(i) with respect to an individual Person, such Person may aggregate such Person's account, such Person's parent's, child's or spouse's (collectively "family") accounts, such Person's or such Person's family's retirement accounts, and accounts owned by a corporation or partnership in which such Person or such Person's family is a majority owner or which is controlled by such person or such Person's family; and

(ii) with respect to a Person that is a corporation or partnership, such Person's accounts and such Person's Affiliates' accounts.

(b) The Distribution Agent in his exclusive discretion may, for purposes of this Section 3.5, but shall not have any obligation to, aggregate accounts not designated for aggregation in a Proof of Claim Form.

(c) Notwithstanding the aggregation of individual accounts with retirement accounts (*e.g.*, IRA accounts) for purposes of this Section 3.5, all payments shall respect the manner in which an account is nominated. For example, Jane Smith may aggregate her personal accounts with her IRA account to meet the Minimum Distribution Amount. However, the payment to

Jane Smith will be made payable directly to her for her personal account(s) and payable to the trustee or custodian of her IRA for her IRA account(s).

3.6 The receipt of McAfee Common Stock during the Recovery Period by gift, inheritance, devise, operation of law, or acquisition other than through an open market purchase shall not be deemed to be a purchase of McAfee Common Stock during the Recovery Period, nor shall it be deemed an assignment of any claim relating to the purchase of such shares unless specifically provided in the instrument of gift or assignment. However, the recipient of McAfee Common Stock as a gift or as a distribution from an estate shall be eligible to file a Proof of Claim Form and participate in the distribution of the Fair Fund to the extent the particular donor or decedent as the actual purchaser of McAfee Common Stock would have been eligible based upon the circumstance of such purchase within the Recovery Period. However, the donee and the donor may not both make a claim with regard to the same McAfee Common Stock. If both the donor and the donee make such a claim, only the claim filed by the donee will be honored.

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

3.8 Claims on behalf of a tax qualified retirement plan and such plan's participants are properly made by the custodian or fiduciary of the plan and not by the plan's participants. The Distribution Agent shall distribute any payments on such claims directly to the custodian or fiduciary of the retirement plan. The distribution shall be accompanied by a list of plan participants and the number of shares owned by each plan participant, if that information is known to the Distribution Agent or provided to the Distribution Agent. The custodian or fiduciary of the retirement plan shall distribute any payments received in a manner that is consistent with its fiduciary duties and the account or plan provisions. With respect to any tax qualified retirement plan that has been closed prior to the Distribution Agent's identification of Potentially Eligible Claimants, the Distribution Agent shall endeavor to distribute funds directly to the beneficial account holders of such tax qualified retirement plan if the information required for such a distribution is known to or provided to the Distribution Agent prior to the Claims Bar Date.

3.9 Custodians, trustees, or professionals investing on behalf of more than one Potentially Eligible Claimant in a pooled investment fund or entity 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 professionals 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, even if the pooled investment fund or entity is a Class Action Authorized Claimant (as defined in Sections 1.10 and 3.4 above). The certification form will be available upon request from the Distribution Agent.

3.10 To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make adjustments or clarifications to the Distribution Plan that are consistent with the

purposes of the Distribution Plan, if agreed upon by the Distribution Agent and the staff of the Commission and approved by the Court.

3.11 To maintain a high-level of quality control, the Independent Outside Accounting Firm shall perform an independent test of validated claims based upon a random sample statistically designed to provide a 98% confidence level, plus or minus 2%, that claims have been accurately validated. The independent test shall commence no later than fourteen (14) days after the Claims Determination Date and be completed no later than twenty-one (21) days after the Claims Determination Date. Upon completion of the independent test, the Independent Outside Accounting Firm shall provide a complete copy of the report to the staff of the Commission. Based upon the results of the independent test, the Distribution Agent shall correct any individual errors identified and perform database searches or additional procedures to correct any errors that may have occurred during claims processing, and consult on any such corrections or additional procedures with the staff of the Commission.

**B. Identification of and Notice to Eligible Claimants**

3.12 The Distribution Agent shall, insofar as is practicable, use its best efforts to identify Potentially Eligible Claimants from a review of trading records and any other commercially reasonable sources available to the firm, including the database maintained by the Claims Administrator in the Class Action.

3.13 McAfee shall cooperate with the Distribution Agent and provide the Distribution Agent with all information that is in its possession, custody, or control as requested by the Distribution Agent in the performance of his duties under this Distribution Plan. This Distribution Plan is not intended to create any obligation on McAfee in addition to those arising from the Court's previous Orders, or as otherwise explicitly set forth herein.

3.14 In order to ensure a timely and accurate mailing of Claims Packets to Potentially Eligible Claimants, the transfer agent for McAfee shall deliver to the Claims Administrator its transfer files in its possession, custody or control (*i.e.*, all record holders of McAfee Common Stock on the first and last day of the Recovery Period, plus all record transferees during the period) no later than five (5) days from the date of the entry of the Order by the Court approving the Distribution Plan.

3.15 Within forty-five (45) days following the entry by the Court of its order approving this Distribution Plan, the Distribution Agent shall:

(a) mail by United States First Class Mail a Claims Packet to each Potentially Eligible Claimant known to the Distribution Agent;

(b) include a cover letter with the Claims Packet sent to each Class Action Authorized Claimant stating that such Class Action Authorized Claimant is automatically deemed an Eligible Claimant with respect only to those McAfee Common Stock transactions for which a claim was previously authorized in the Class Action. The cover letter also will notify each Class Action Authorized Claimant that if the claimant did not engage in any McAfee Common Stock transactions for which a claim was not previously authorized in the Class Action, the claimant is not required to submit a written claim and need not do anything further to have

the claim considered, except to the extent that such Class Action Authorized Claimant is a pooled investment fund or entity with more than one underlying beneficiary and required to comply with the certification requirement set forth in Section 3.9 above. The letter also will notify each Class Action Authorized Claimant that if the claimant did engage in additional McAfee Common Stock transactions during the Recovery Period for which a claim was not previously authorized in the Class Action, and would like to make a claim regarding such transactions, the claimant must submit a written claim with respect to those transactions only, and comply with the certification requirement set forth in Section 3.9 to the extent applicable;

(c) establish a website for the Fair Fund from which each Potentially Eligible Claimant may request a Claims Packet by mail or download a copy of the Claims Packet and other relevant documents online and establish a link to such website from the websites of Day Pitney LLP and The Garden City Group, Inc.;

(d) request that McAfee post a copy of this Distribution Plan and a copy of the Distribution Plan Notice on its website, and establish a link to the Fair Fund's website;

(e) provide a copy of the Distribution Plan and Distribution Plan Notice to the Commission, and request that the Commission establish a link to the Fair Fund's website;

(f) establish a toll-free telephone call-in number by which Potentially Eligible Claimants can obtain information; and

(g) publish a copy of the Summary Notice on a single occasion in the following two national publications on or about the date of the mailing of Claims Packets to Potentially Eligible Claimants (or in such other publications as the Distribution Agent and the staff of the Commission may choose): Investors Business Daily and PR Newswire.

3.16 The Distribution Agent shall also give additional notice of the distribution process in such manner as the Distribution Agent, in his sole discretion, deems appropriate, which may include direct notification to custodians, securities broker-dealers and other potential nominee purchasers identified by the Distribution Agent. In his discretion, the Distribution Agent may limit such notice to the sub-period of the Recovery Period from trade date August 17, 1998 through trade date April 14, 1999 that preceded the class period in the Class Action.

3.17 The Distribution Agent shall promptly provide a Claims Packet to any Potentially Eligible Claimant who so requests electronically, in writing or by telephone, as set forth in the Distribution Plan Notice.

3.18 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Potentially Eligible Claimant (except for a Class Action Authorized Claimant with respect to those McAfee Common Stock transactions for which a claim was previously authorized in the Class Action as set forth in Sections 1.10 and 3.4 above) must submit to the Distribution Agent a properly completed Proof of Claim Form reflecting such Potentially Eligible Claimant's claim, together with all required supporting documentation. The Claims Bar Date may be extended for one or more Potentially Eligible Claimants by the Distribution Agent in which event such extension shall constitute the Claims Bar Date for such Potentially Eligible Claimants. Unless otherwise determined by the Distribution Agent in its sole discretion for good cause shown, any

Potentially Eligible Claimant that does not file a properly completed and documented Proof of Claim Form, if so required, including the Potentially Eligible Claimant's Tax Identification Number, so that such completed form and documentation are received by the Distribution Agent on or before the Claims Bar Date (*see* Section 1.5 above), shall be barred from asserting a claim against the Distribution Agent or the Fair Fund. The burden shall be upon the Potentially Eligible Claimant to ensure that his or her Proof of Claim Form has been properly and timely received by the Distribution Agent.

3.19 Claims with 100 or more transactions or on behalf of 20 or more different accounts must be submitted electronically and in the format specified by the Claims Administrator. The mandatory electronic filing requirements will be available on the Fair Fund website. Files that do not comply with the required electronic filing format may be rejected.

3.20 Each Potentially Eligible Claimant (except for a Class Action Authorized Claimant not required to submit a written claim under Section 3.4) will be put on written notice in the Claims Packet that no claim will be deemed submitted unless the Claimant receives an "Acknowledgement Postcard" from the Claims Administrator, which shall be the official acknowledgement that the Distribution Agent has received and will review the claim.

C. Notification of Claims Determination,  
Including Notice of Deficient Claims and Opportunity to Cure

3.21 The Distribution Agent shall review each Proof of Claim Form to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Distribution Agent on other issues relevant to the claim. Each Potentially Eligible Claimant shall have the burden of proof to establish the validity and amount of his or her claim, and that he or she qualifies as an Eligible Claimant; and the Distribution Agent shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Distribution Agent, any additional information and/or documentation deemed relevant by the Distribution Agent.

3.22 The Distribution Agent shall provide to each Potentially Eligible Claimant whose claim is deficient in whole or in part, a Claim Deficiency Notice setting forth the reason or reasons why the claim is deficient. The Claim Deficiency Notice shall be provided to affected Potentially Eligible Claimants within forty-five (45) days after the Claims Bar Date.

3.23 The Distribution Agent shall have the authority, in his sole discretion, on a case-by-case basis, to extend the Claims Bar Date and waive technical claim deficiencies and approve claims.

3.24 Any Potentially Eligible Claimant who has received a Claim Deficiency Notice shall have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies identified in the Notice.

3.25 On or before the Claims Determination Date, the Distribution Agent shall mail by United States First Class Mail a Determination Notice to each Potentially Eligible Claimant who has filed a Proof of Claim Form with the Distribution Agent, setting forth the Distribution Agent's conclusions concerning such claim. In the event a claim is denied, in whole or in part, the

Distribution Agent will state the reason for such denial. The Claims Determination Date shall be within one hundred and twenty (120) days of the Claims Bar Date.

3.26 No Potentially Eligible Claimant who has failed timely to file an appropriate Proof of Claim Form, or who failed to cure any deficiency identified in a Claim Deficiency Notice, shall be permitted to object to the barring or treatment of his or her claim on the basis that the Distribution Agent failed to mail, or properly to mail, or that such Potentially Eligible Claimant failed to receive, a copy of the Distribution Plan Notice, Claims Packet or the relevant Determination Notice or Final Determination Notice, or that an initial Proof of Claim Form, or revised Proof of Claim Form to cure deficiencies, or the requisite supporting documentation, was improperly reflected as not having been received by, or properly recorded as received by, the Distribution Agent, or that a Potentially Eligible Claimant's name and/or proper contact information was not properly reflected on the Distribution Agent's records. The burden of notifying the Distribution Agent of a Potentially Eligible Claimant's current address and other contact information, and of ensuring that such information is properly reflected on the Distribution Agent's records, shall be on the Potentially Eligible Claimant.

3.27 All determinations of the Distribution Agent that he makes in accordance with this Distribution Plan shall be final and not subject to appeal.

#### D. Payment of Approved Claims

3.28 The Distribution Agent shall distribute the Available Distribution to all Eligible Claimants who filed Approved Claims only after all Proof of 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.

3.29 Within forty-five (45) days following the Claims Determination Date, the Distribution Agent shall prepare a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Approved Claim of each Eligible Claimant, and shall petition the Court for the authority to distribute a specified distributable amount from the Available Distribution to the Eligible Claimants holding Approved Claims as provided for in this Distribution Plan. In recommending such distributable amount to the Court, the Distribution Agent shall hold back a prudent reserve to take into account final fees and expenses incurred in the administration of the performance of its duties under this Distribution Plan, as well as reserves for taxes as requested by the Tax Administrator, and for any claims that require further review, late claims, or other claims at the Distribution Agent's discretion.

3.30 Following the Court's approval of the Distribution Agent's petition for the authority to distribute a specified distributable amount from the Available Distribution to the Eligible Claimants holding Approved Claims as provided for in this Distribution Plan, the Court may issue an order to the Clerk of the Court to transfer monies in the CRIS representing the Fair Fund equal to the specified distributable amount, plus any lawful fees and tax payments requested by the Tax Administrator, to the account or accounts established by the Distribution Agent in accordance with Section 3.31 below in such amounts and manner as the Distribution Agent shall designate in writing.

3.31 Upon receipt of the monies from the Court's registry in this matter, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account as described below.

(a) The bank account will be maintained at a major United States commercial bank (the "Bank"), to be proposed by the Distribution Agent subject to approval by the staff of the Commission. The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.

(b) Pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, the Distribution Agent and the Bank shall establish both an escrow account and a controlled distribution account in the name of and bearing the Employer Identification Number ("EIN") of the Qualified Settlement Fund ("QSF"), as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: QSF, SEC v. McAfee Distribution Fund, EIN No. 20-4657396, as custodian for the benefit of investors allocated a distribution from the McAfee Distribution Plan in SEC v. McAfee, Inc. (the "Fair Fund Escrow Account").

(c) During the term of the Escrow Agreement, the Fair Fund Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, tax obligations, and fees and expenses, or invested or reinvested in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short-term United States Treasury securities and obligations; provided however, that investments in the United States Treasury securities will not be made through repurchase agreements or other derivative products. The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

3.32 All Fair Fund checks issued to Eligible Claimants by the Distribution Agent shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period (the "check-cashing 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 returned to the Fair Fund.

3.33 The Distribution Agent shall use all reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Distribution Agent undelivered. However, the burden is on the claimant to provide the Distribution Agent with any changes to his or her mailing address.

3.34 All Fair Fund 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; and
- (d) the name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution.

Any such communication shall be submitted to the staff of the Commission and the Tax Administrator for review and approval. The Fair Fund distribution checks, on their face, or the accompanying mailing shall clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of their investment in McAfee Common Stock.

3.35 Under no circumstances shall the Distribution Agent, his employees or his agents incur any liability to any Person if he makes a distribution in accordance with the list of all Eligible Claimants and their Approved Claims as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Claimant of a distribution from the Fair Fund, such Eligible Claimant shall be deemed to have released all claims that such Eligible Claimant may have against the Distribution Agent, his employees, agents and attorneys in connection with the Distribution Plan and the administration of the Fair Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

3.36 The submission of the Proof of Claim Form and the receipt and acceptance of a distribution by an Eligible Claimant shall not affect an Eligible Claimant's rights and claims against any party (other than the Distribution Agent), including, but not limited to, McAfee and McAfee's past or present directors, officers, employees, advisors and agents.

## **ARTICLE IV**

### **RESPONSIBILITIES OF THE TAX ADMINISTRATOR**

4.1 The Fair Fund is a "Qualified Settlement Fund" within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) obtaining a taxpayer identification number;
- (b) timely requests for funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and

(c) fulfilling any information reporting or withholding requirements required for distributions from the Fair Fund.

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

## ARTICLE V

### PAYMENT OF COSTS, FEES, AND TAXES, AND FILING OF REPORTS AND ACCOUNTINGS

5.1 Subject to the procedures set forth in Paragraphs 2.e. and 2.f. of the Order, the Distribution Agent is entitled to pay from the Fair Fund all reasonable costs, fees, and taxes of the Tax Administrator, the Claims Administrator and the Independent Outside Accounting Firm and other expenses incurred in the performance of his duties. The Distribution Agent shall be further entitled to be compensated for his fees and costs at the rates previously negotiated with the Commission and shall also be entitled, subject to the procedures set forth in the Order, to pay those fees and costs from the Fair Fund.

5.2 The Distribution Agent may apply each month for payment of fees and expenses incurred by him and his own partners, counsel, and associates, and by any third parties retained by the Distribution Agent in furtherance of his duties, including the Claims Administrator and the Independent Outside Accounting Firm (collectively, "Agents"). The copy of the request submitted to the Court shall, with respect to the Distribution Agent and his partners, counsel, and associates, summarize the services rendered, provide the total number of billable hours expended by each timekeeper, and summarize expenses incurred. The copy of the request submitted to the Court shall also include as exhibits summary invoices from any Agents who supplied services or incurred expenses during the month. Before the Distribution Agent applies to the Court for payment of fees and expenses, he shall provide the staff of the Commission a copy of the request at least ten (10) days before that request is filed with the Court, along with detailed invoices for the Distribution Agent, his partners, counsel, associates, and Agents, showing: (a) the dates of service; (b) the name or initials of the individuals rendering the services; (c) a brief and informative description of the services or activities; (d) the hourly rates; (e) the times charged; and (f) the amounts (rate x time). If the Commission has any unresolved objections to an application by the Distribution Agent for payment of fees and expenses, the Commission shall file an opposition statement setting forth the basis for the Commission's opposition within five (5) business days after the Distribution Agent files the application with the Court.

5.3 As required by Paragraph 3 of the Order, the Distribution Agent shall file with the Court a progress report, pursuant to and in a format to be provided by the Commission, within ninety (90) days of his appointment, and shall file additional reports within twenty (20) days after the end of every quarter thereafter, and a final report when his duties are completed. The Distribution Agent shall serve a copy of all such reports on counsel for the Commission and McAfee. Such progress reports shall inform the Court and the staff of the Commission of the activities and status of the Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the account or accounts comprising the Fair Fund, include, among

other things, an interim accounting of all monies in the Fair Fund as of the most recent month-end, including all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, the value of those accounts, all monies earned or received into these accounts, funds distributed to Eligible Claimants under this Distribution Plan, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other expenses incurred in the implementation of this Distribution Plan. The final report required by Paragraph 3 of the Order shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, and a request for approval of any unpaid fees and costs. The Clerk of the Court shall provide the Distribution Agent with any account information relating to funds held in the CRIS under the case name designation “*SEC v. McAfee, Inc.*”, Account Number C06-0009PJH that may be required for the progress and final reports, including providing copies of any account statements that the Distribution Agent may request.

## ARTICLE VI

### OTHER RIGHTS AND POWERS

6.1 The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by him in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

6.2 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 such institutions are not excluded pursuant to Section 1.16 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.

6.3 The Distribution Agent may be removed at any time by the Court, and replaced with successors. In the event the Distribution Agent decides to resign, he must first give written notice to the Commission and the Court of such intention, and such resignation shall not be effective until the Court has appointed a successor. The Distribution Agent shall then follow such instructions as such successor or the Court gives him in turning over custody, control and management of the Fair Fund and other property collected pursuant to the Distribution Plan.

6.4 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.

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

SO ORDERED:

Dated: \_\_\_\_\_

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UNITED STATES DISTRICT JUDGE