

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

No. 3:14-cv-00663
Judge Haynes

AGFEED INDUSTRIES, INC., et al.
Defendants.

DISTRIBUTION PLAN NOTICE
AGFEED INDUSTRIES, INC. DISTRIBUTION FUND

If you held shares of AgFeed Common Stock at any time during the Recovery Period (March 14, 2008 through and including December 19, 2011), and suffered a loss according to the Distribution Plan,¹ you may be eligible for a payment from the Distribution Fund.²

This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. IF YOU SATISFY THE ELIGIBILITY CRITERIA DESCRIBED BELOW, YOU MAY BE ENTITLED TO A RECOVERY FROM THE DISTRIBUTION FUND. THIS NOTICE CONTAINS IMPORTANT INFORMATION REGARDING YOUR ELIGIBILITY.

If you had an approved claim in connection with the related *Class Action, Blitz v. AgFeed Industries, Inc., et al.* (Civil Action No. 11-cv-0992), and you received a Notice of Eligibility with this Distribution Plan Notice, you do not need to submit a claim now, unless you want to modify your claim. If you want to modify your claim, you must submit a Proof of Claim Form postmarked no later than March 31, 2017 (the “Claims Bar Date”).

If you held shares of AgFeed common stock during the Recovery Period and you: (a) did not have a claim in the Class Action; (b) had a claim in the Class Action that was denied in full for not having valid documentation; or (c) had a claim in the Class Action that was approved, but under the terms of this Distribution Plan has a summed Eligible Loss Amount less than or equal to \$0.00, you must submit a completed Proof of Claim Form with the necessary documentation postmarked no later than March 31, 2017, to be eligible to participate in the Distribution Fund.

(A) Purpose of this Notice

1. The purpose of this Distribution Plan Notice is to inform you that you may be entitled to share in the proceeds of the Distribution Fund established by the Securities and Exchange Commission (“SEC” or “Commission”) in *Securities and Exchange Commission v. AgFeed Industries, Inc., et al.* (Case No. 3:14-cv-00663). The Distribution Plan Notice is being mailed to Class Action SEC Authorized Claimants and Potentially Eligible Investors who held shares of AgFeed common stock during the Recovery Period and who can be identified by the Distribution Agent. Unless you are a Class Action SEC Authorized Claimant, as described below, you must file a Proof of Claim Form in accordance with the steps in this Distribution Plan Notice to be potentially eligible to share in the Distribution Fund. Copies of the Distribution Plan Notice, Proof of Claim Form, Distribution Plan and other important documents are also available on the AgFeed Distribution Fund website at www.SECvAgFeedDistributionFund.com and through the SEC’s website at www.SEC.gov.

¹ Unless otherwise defined herein, capitalized terms shall have the same meaning as those set forth in the Distribution Plan as approved by the Court on October 18, 2016.

² The Distribution Fund is the Disgorgement Fund, plus interest, less any amount expended or to be expended for administering the Disgorgement Fund.

Questions? Visit www.SECvAgFeedDistributionFund.com or call 1-888-286-8201.

(B) Background

2. On October 6, 2014, the Commission filed a settled enforcement action against AgFeed Industries, Inc. (“AgFeed” or “Defendant”), alleging that the Defendant reported fictitious revenues from its China operations from 2008 through June 30, 2011 in order to meet financial targets and prop up the stock price. The fraud caused AgFeed’s publicly reported revenues to be inflated by approximately \$239 million during this period. The Commission alleged that the Defendant’s conduct violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13.
3. Pursuant to the Final Judgment, Defendant was found liable for disgorgement in the amount of \$18,000,000.00, representing profits gained as a result of the conduct alleged in the Complaint. Defendant was obligated to pay (i) \$12,500,000.00 *pro rata* to holders of Class 5B equity interests, as defined in AgFeed’s July 22, 2014 Second Amended Chapter 11 Plan of Liquidation Supported by the Official Committee of Equity Security Holders (the “Proposed Plan”) in *In re AgFeed Industries, Inc.*, Chapter 11 case No. 13-11762 (BLS) (Bankr. D. Del.) (the “Bankruptcy Case”), and (ii) \$5,500,000.00 to the Securities and Exchange Commission, pursuant to a confirmed Chapter 11 plan of liquidation in the Bankruptcy Case (the “Confirmed Plan”).
4. Pursuant to the Confirmed Plan, **\$5,500,000.00** was paid to the Commission. The funds were deposited into a non-interest-bearing account with the Commission (the “Disgorgement Fund”).
5. On October 18, 2016, the Distribution Plan was approved by the Court. Pursuant to the Distribution Plan, investors who held shares of AgFeed common stock during the Recovery Period and suffered a loss, as provided in the Distribution Plan, may be entitled to receive a distribution from the Distribution Fund. The Distribution Fund will be used to compensate injured investors on a *pro rata* basis for losses that took place during the Recovery Period.

ELIGIBILITY CRITERIA AND CALCULATIONS OF LOSSES

(C) Eligibility Criteria

6. To be an Eligible Claimant, you must be either a Class Action SEC Authorized Claimant, as defined below, or you must submit a valid Proof of Claim Form to the Distribution Agent postmarked no later than **March 31, 2017**.
7. A Class Action SEC Authorized Claimant is a Person who had a claim in the Class Action and whose claim has a summed Eligible Loss Amount greater than \$0.00 under the terms of the Distribution Plan. **If you are a Class Action SEC Authorized Claimant, you do not need to file a Proof of Claim Form to share in the distribution from the Distribution Fund**; however, if you want to modify your claim, you must submit a Proof of Claim Form postmarked by **March 31, 2017**. Please note that the Recovery Period is longer in the Distribution Plan than in the Class Action. Class Action SEC Authorized Claimants will receive a Notice of Eligibility with this Distribution Plan Notice. If you did not receive a Notice of Eligibility, then you are not a Class Action SEC Authorized Claimant and must submit a Proof of Claim Form to participate in the distribution. If you have questions about a claim you filed in the Class Action, please contact the Distribution Agent by calling 1-888-286-8201 or by sending an email to info@SECvAgFeedDistributionFund.com.
8. If you: (a) did **not** have a claim in the Class Action; (b) had a claim in the Class Action that was denied in full for not having valid documentation; or (c) had a claim in the Class Action that was approved, but under the terms of the Distribution Plan had a summed Eligible Loss Amount less than or equal to \$0.00, you **must** file a Proof of Claim Form in order to share in any recovery from the Distribution Fund. To be considered eligible to participate in the distribution, you must have held shares of AgFeed common stock during the applicable Recovery Period, and suffered a loss as defined in the Distribution Plan. Please note that filing a Proof of Claim Form does not guarantee that you will be eligible for any recovery.
9. The following parties are excluded from receiving any recovery from the Distribution Fund and cannot be considered Eligible Claimants:
 - a. Any director or officer, or former director or officer, of the Defendant, or any of Defendant’s past or present Affiliates who served in such capacity during the Recovery Period and were directly involved in the conduct detailed in the Complaint;
 - b. Any employee or former employee of Defendant or of any of its past or present Affiliates who has been terminated for cause, or has otherwise resigned, in connection with the conduct described in the Complaint or any related Commission action;

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- c. Any defendant in any action brought by the Commission related to the conduct described in the Complaint or any related Commission action, 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 Complaint or any related Commission action, unless and until such Person is found not guilty prior to the Claims Bar Date, and proof of the finding(s) is included in such Person's timely filed Proof of Claim Form;
- e. Any Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, or controlled entities of any of the foregoing Persons or entities described in Paragraph 9(a)–(d) above;
- f. Any purchaser or assignee of another Person's right to obtain a recovery from the Distribution Fund, provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law; and/or
- g. The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

(D) Allocation Among Eligible Claimants

- 10. The Distribution Agent shall allocate the Distribution Fund among Eligible Claimants according to each Eligible Claimant's calculated Eligible Loss Amount. As described in the Plan of Allocation (Exhibit A to the Distribution Plan), the Eligible Loss Amount is determined by aggregating the Recognized Loss (or Gain) per Share of all shares held at any time during the Recovery Period. Distribution payments shall only be made to Eligible Claimants whose total payment for a claim exceeds \$10.00.

Plan of Allocation

- 11. The Distribution Fund will be distributed to Eligible Claimants pursuant to the terms of the Plan of Allocation.

CALCULATION OF RECOGNIZED LOSS PER SHARE

- 12. Based on the formula set forth below, "Recognized Loss per Share" shall be calculated for each purchase or acquisition of AgFeed common stock during the Recovery Period that is listed in the claim and for which adequate documentation is provided, or was accepted as part of the Class Action. In the calculations below, if a Recognized Loss per Share calculates to a negative number, that Recognized Loss per Share shall be \$0.00.
- 13. For shares of AgFeed common stock not purchased during the Recovery Period, the Recognized Loss per Share is \$0.00.
- 14. For each share of AgFeed common stock purchased during the Recovery Period and:
 - a. Sold between March 14, 2008, and the close of trading on December 19, 2011, the Recognized Loss per Share shall be *the lesser of*: (i) the amount of artificial inflation per share (as set forth in Table A) on the date of purchase, minus the amount of artificial inflation per share as set forth in Table A on the date of the sale; or (ii) purchase/acquisition price minus the sale price.
 - b. Held as of the close of trading on December 19, 2011, the Recognized Loss per Share shall be *the lesser of*: (i) the amount of artificial inflation per share (as set forth in Table A) on the date of purchase; or (ii) the purchase/acquisition price minus \$0.38, the closing price for AgFeed common stock on December 19, 2011.

GENERAL PROVISIONS

- 15. Exercise of option contracts or the conversion of preferred stock into common stock will be considered to be purchases or sales of common stock as of the date of the exercise or conversion.
- 16. To the extent a claimant had a gain from his, her, or its overall transactions in AgFeed common stock during the Recovery Period, the value of the claim will be zero. Shares held before the beginning of the Recovery Period and uncovered short sales are excluded from the calculation of overall gain or loss. For shares purchased during the Recovery Period and held through the end of the Recovery Period, a value of \$0.38 will be applied as the holding value for the purpose of calculating an overall loss or gain. If a claimant had a net market loss in his, her or its trading in AgFeed common stock, the claimant's Eligible Loss Amount shall be limited to the claimant's net market loss.

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17. Subject to the limitations set forth in the Distribution Plan, if a Potentially Eligible Claimant acquired AgFeed common stock by way of gift, inheritance, devise or operation of law, such claim will be computed using the date and price of the original purchase and not the date and price of transfer, gift or inheritance. To the extent those shares were not originally purchased in the Recovery Period, the Recognized Loss per Share for that acquisition shall be \$0.00.
18. The Recognized Loss per Share on “short sales” is zero. In the event that a claimant has an opening short position in AgFeed common stock, the earliest Recovery Period purchases shall be matched against such opening short position and not be entitled to a recovery and will not contribute to a market gain or loss until that short position is fully covered.

USE OF “FIFO” METHODOLOGY FOR COMPUTATION OF RECOGNIZED LOSSES FOR ELIGIBLE CLAIMANTS WHO MADE MULTIPLE TRANSACTIONS IN ELIGIBLE SECURITIES DURING THE RECOVERY PERIOD

19. For Eligible Claimants who held shares before the beginning of the Recovery Period and/or made multiple purchases, acquisitions or sales of the AgFeed common stock during the Recovery Period, the sales of shares will be matched in chronological order, first against the claimant’s closing position the day before the beginning of the Recovery Period, until that day’s closing position has been exhausted; then remaining sales after the beginning of the Recovery Period will be matched in chronological order against purchases or acquisitions made in the Recovery Period until all such shares have been exhausted. Purchases and sales of eligible securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

COMPUTATION OF THE ELIGIBLE LOSS AMOUNT FOR EACH ELIGIBLE CLAIMANT

20. The Eligible Loss Amount will be calculated for each share of AgFeed common stock that was purchased in the Recovery Period, listed in the Proof of Claim Form and for which adequate documentation is provided or which is listed in the Class Action SEC Authorized Claimant’s record. The Eligible Loss Amount for each share of AgFeed common stock is calculated by multiplying the number of shares by the appropriate Recognized Loss per Share as calculated in Paragraphs 13 and 14 above. An Eligible Claimant’s Eligible Loss Amount equals the sum of Recognized Losses for all shares purchased in the Recovery Period.

DISTRIBUTION PAYMENT CALCULATIONS

21. Should the total Eligible Loss Amounts of all Eligible Claimants exceed the Net Distribution Fund, the Distribution Agent will distribute funds to the Eligible Claimants based upon a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Claimant’s *pro rata* share of the Net Distribution Fund based upon each Eligible Claimant’s total Eligible Loss Amount divided by the total Eligible Loss Amounts of all Eligible Claimants.
22. Each Eligible Claimant shall be allocated a Distribution Payment if eligible. In no event will an Eligible Claimant receive a Distribution Payment totaling more than his, her or its calculated harm, after taking into account the payment received in the Class Action.
23. If an Eligible Claimant has a calculated Distribution Payment that is less than \$10.00 in total, that Eligible Claimant will not be included in the calculation, and the funds will be distributed to other Eligible Claimants whose Distribution Payment is greater than the Minimum Distribution Amount.

(E) Instructions for Obtaining and Filing a Proof of Claim Form

24. If you have been determined to be a Class Action SEC Authorized Claimant, you do not need to file a Proof of Claim Form unless you want to modify your existing claim. If you want to modify your existing claim, you may obtain a copy of the Proof of Claim Form from the Distribution Fund website at www.SECvAgFeedDistributionFund.com or request that the Distribution Agent mail you a Proof of Claim Form by writing to the address below, sending an email to info@SECvAgFeedDistributionFund.com, or by calling 1-888-286-8201.
25. If you have not been determined to be a Class Action SEC Authorized Claimant, a Proof of Claim Form has been included with this notice. If you require additional forms, you may make copies of the enclosed Proof of Claim Form, download and print the Proof of Claim Form from the Distribution Fund website at www.SECvAgFeedDistributionFund.com, or request that the Distribution Agent mail you a Proof of Claim Form by writing to the address below, sending an email to info@SECvAgFeedDistributionFund.com, or by calling 1-888-286-8201.

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26. Additional information regarding the Distribution Fund may be found on the Distribution Fund's website at www.SECvAgFeedDistributionFund.com. All inquiries concerning this Distribution Plan Notice and Proof of Claim Form should be made to the Distribution Agent by writing to the address below, sending an email to info@SECvAgFeedDistributionFund.com, or by calling 1-888-286-8201.
27. Please be sure to provide your complete name and mailing address on the Proof of Claim Form.
28. **All Proof of Claim Forms must be signed and submitted to the address provided below, postmarked no later than March 31, 2017. Claims postmarked after March 31, 2017, will not be eligible to participate in the distribution.**

SEC v. AgFeed Distribution Fund
PO Box 3757
Portland, OR 97208-3757

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

29. If you held AgFeed common stock during the Recovery Period (March 14, 2008 to December 19, 2011, inclusive) for the beneficial interest of an individual or entity other than yourself, and you did not previously provide the names and address of such investors to the Distribution Agent in the Class Action, then within TEN (10) DAYS OF YOUR RECEIPT OF THIS NOTICE, you must either:
 - a. Provide to the Distribution Agent the name and last known address of each individual or entity for whom or which you held the eligible AgFeed common stock during such time period; or
 - b. Request additional copies of this Distribution Plan Notice and Proof of Claim Form, and within 10 days, mail the Distribution Plan Notice and Proof of Claim Form to the beneficial owners of the eligible AgFeed common stock.
30. **If you already provided names and address to Epiq, as part of the Class Action, please do not resubmit those names and addresses.**
31. You are entitled to reimbursement for your reasonable expenses actually incurred in providing notice, provided an invoice is timely submitted to the Distribution Agent. All communications concerning the foregoing should be addressed to the Distribution Agent at the address below:

SEC v. AgFeed Distribution Fund
PO Box 3757
Portland, OR 97208-3757
1-888-286-8201
info@SECvAgFeedDistributionFund.com

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TABLE A
Purchase and Sale Inflation March 14, 2008 — December 19, 2011

Transaction Date	Inflation
March 14, 2008 – August 1, 2011	\$0.91
August 2, 2011 – September 29, 2011	\$0.33
September 30, 2011 – December 19, 2011	\$0.12

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