

# **EXHIBIT 6**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

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IN RE MUSHROOM DIRECT  
PURCHASER ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

CASE NO. 06-cv-0620

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**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT is made by and between “Certain Defendants”<sup>1</sup> and the Direct Purchaser Class Plaintiffs’ counsel on behalf of Plaintiffs Wm. Rosenstein & Sons Co.; M.L. Robert II, LLC; M. Robert Enterprises, Inc.; Market Fare, Inc.; Associated Grocers, Inc., and Diversified Foods and Seasonings, Inc. on their own behalf and as representatives of the Direct Purchaser Plaintiff Class (defined below) (collectively “Direct Purchaser Class Plaintiffs”) (Certain Defendants and the Direct Purchaser Class Plaintiffs collectively, the “Parties”) in the consolidated Direct Purchaser Class Action in *In Re Mushroom Direct Purchaser Antitrust Litigation*, 06-cv-0620, pending in the United States District Court of the Eastern District of Pennsylvania (the “Class Action”). The non-class plaintiffs in the consolidated individual actions in *In Re Mushroom Direct Purchaser Antitrust Litigation*, 06-cv-0620, E.D.Pa. are not parties to this Settlement Agreement.

WHEREAS, Direct Purchaser Class Plaintiffs have alleged, among other things, that Certain Defendants entered into an agreement to restrain trade with the Eastern Mushroom Marketing Cooperative (“EMMC”) and certain of its members in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1, 2, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and caused Direct Purchaser Class Plaintiffs to incur significant damages;

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<sup>1</sup> “Certain Defendants” are Eastern Mushroom Marketing Cooperative, Inc. (“EMMC”); Robert A. Ferranto, Jr. t/a Bella Mushroom Farms; Brownstone Mushroom Farms, Inc.; To-Jo Fresh Mushrooms, Inc.; Country Fresh Mushroom Co.; Gino Gaspari & Sons, Inc.; Gaspari Mushroom Co., Inc.; Kaolin Mushroom Farms, Inc.; South Mill Mushroom Sales, Inc.; Modern Mushroom Farms, Inc.; Sher-Rockee Mushroom Farm, LLC; C&C Carriage Mushroom Co.; Phillips Mushroom Farms, Inc.; Louis M. Marson, Jr., Inc.; Monterey Mushrooms, Inc.; Forest Mushroom, Inc.; Harvest Fresh Farms, Inc.; Leone Pizzini and Son, Inc.; LRP-M Mushrooms LLC; United Farm Cooperative, Inc.; Masha & Toto, Inc., trading as M&T Mushrooms; Oakshire Mushroom Farm, Inc.; W&P Mushroom, Inc.; and John Pia.

WHEREAS, Certain Defendants deny Direct Purchaser Class Plaintiffs' allegations of unlawful conduct and characterizations thereof and have asserted defenses to Direct Purchaser Class Plaintiffs' claims;

WHEREAS, Direct Purchaser Class Plaintiffs and Certain Defendants agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Certain Defendants or of the truth of any of the claims or allegations alleged in the Class Action or actions consolidated therein;

WHEREAS, arm's length settlement negotiations have taken place between counsel for Direct Purchaser Class Plaintiffs and counsel for Certain Defendants, and this Settlement Agreement, which sets forth all of the terms and conditions of the settlement between Certain Defendants and Direct Purchaser Class Plaintiffs, both individually and on behalf of the Direct Purchaser Class, has been reached, subject to the final approval of the Court;

WHEREAS, Certain Defendants have represented to Direct Purchaser Class Plaintiffs that Defendants Monterey Mushrooms, Inc. ("Monterey"), Modern Mushroom Farms, Inc., Sher-Rockee Mushroom Farm, LLC, C&C Carriage Mushroom Co. (collectively "Modern"), Kaolin Mushroom Farms, Inc., South Mill Mushroom Sales, Inc. (collectively "Kaolin"), Brownstone Mushroom Farms, Inc., To-Jo Fresh Mushrooms, Inc. (collectively "To-Jo"), and Phillips Mushroom Farms, Inc. ("Phillips") (collectively, "the MFN Defendants") are each unable to pay their designated amounts under the Most Favored Nation Provisions ("MFN Provisions" or "MFN") in paragraph 21 of the settlement agreement between Direct Purchaser Class Plaintiffs and Giorgi Mushroom Co. ("Giorgi") dated April 27, 2011 and furthermore that their respective contributions to this settlement are the most that each were able to pay without impeding their current business operations;

WHEREAS, the representation by the MFN Defendants regarding their inability to pay higher amounts than they have agreed to contribute to this settlement was material to Direct Purchaser Class Plaintiffs' agreement to this settlement;

WHEREAS, MFN Defendants agreed to produce evidence to Direct Purchaser Class Plaintiffs' Counsel in support of their claim that they believe is sufficient to establish that the contributions by each of the MFN Defendants are the most they have the ability to pay without impeding their current business operations and, in furtherance of that undertaking, retained an accountant who investigated the financial wherewithal of each of the MFN Defendants and prepared a highly confidential report and supplemental Memorandum for the Direct Purchaser Class Plaintiffs' Counsel, who (finding it reasonably acceptable) caused both to be submitted to Giorgi's outside counsel for its attorneys' eyes only review;

WHEREAS, this Settlement Agreement between Certain Defendants and Direct Purchaser Class Plaintiffs is conditioned upon the Court's determination that an exception to the MFN provisions exists for each of the MFN Defendants; Direct Purchaser Class Plaintiffs will file a Petition with the Court to make a separate determination on the Petition prior to deciding preliminary approval.

WHEREAS, Direct Purchaser Class Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts, and careful consideration of those facts and the applicable law, that it would be in the best interests of the Direct Purchaser Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation against Certain Defendants, and to assure a benefit to the Direct Purchaser Class and further, that Direct Purchaser Class Plaintiffs' counsel consider the settlement set forth herein (the "Settlement") to be fair, reasonable, and adequate and in the best interests of the Direct Purchaser Class; and

WHEREAS, Certain Defendants have concluded, despite their belief that they are not liable for the claims asserted against it and have good defenses thereto, that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted litigation, and thereby to put to rest this controversy, and to avoid the risks inherent in uncertain complex litigation;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Certain Defendants and the Direct Purchaser Class Plaintiffs, that the Class Action and all claims of the Direct Purchaser Class Plaintiffs be settled, compromised and dismissed on the merits and with prejudice as to the Released Parties (defined below) and, except as hereinafter provided, without costs as to Direct Purchaser Class Plaintiffs or Certain Defendants, subject to the approval of the Court, on the following terms and conditions:

1. Definitions. The following terms, as used in this Settlement Agreement, have the following meanings:

a. "Direct Purchaser Class Plaintiffs' Counsel" shall refer to the law firm of Garwin Gerstein & Fisher LLP.

b. "Direct Purchaser Class" or "Class" shall mean all persons and entities in the non-Western United States who purchased fresh agaricus mushrooms directly from an Eastern Mushroom Marketing Cooperative (EMMC) member or one of its alleged co-conspirators or its owned or controlled affiliates, agents, or subsidiaries at any time between February 4, 2001 and August 8, 2005. For group buying organizations and their members, direct purchasers are either: (1) members who have a significant ownership interest in or functional control over their organizations; or (2) if no member has such interest or control, the organizations themselves. The Class excludes the EMMC, its members and their parents, subsidiaries and affiliates. The non-Western United States refers to the following states which were in the six regions of the country that Direct Purchaser Class Plaintiffs claim were subject to the EMMC's pricing policies: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Wisconsin, Minnesota, Iowa, Kansas, Nebraska, Colorado, Oklahoma, Texas, Ohio, Missouri, Michigan, Indiana, Kentucky, West Virginia, Illinois and the District of Columbia.

c. "Class Period" shall mean the period from February 4, 2001 through August 8, 2005.

2. Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to undertake their best efforts, including all actions and efforts contemplated by this Settlement Agreement and any other actions and efforts that may be necessary or appropriate by order of the Court, to carry out the terms of this Settlement Agreement, including providing other support and/or the testimony of the accountant as sought by the Court in reviewing the documentation and making its determination regarding whether an exception to the MFN Provisions exists for each of the MFN Defendants. The Settlement is conditioned on its approval by the Court including the Court's finding that exceptions to the MFN Provisions exist as to each MFN Defendant for either (1) the MFN Defendants' inability to pay the settlement amount based on the Settlement Percentage defined in Paragraph 21 of the Giorgi settlement and/or (2) that there has been a material adverse change in the legal position of Class Plaintiffs' case that materially alters Class Plaintiffs' negotiating position. This settlement is also conditioned on Certain Defendants' ability to obtain acceptable security as specified in paragraph 7 to secure Certain Defendants' agreed upon payments on the first anniversary and second anniversary of the first installment payment.

3. Following execution of this Settlement Agreement, the Direct Purchaser Class Plaintiffs shall file with the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall request the entry of a preliminary approval order ("Preliminary Approval Order") consistent with the terms of this Settlement Agreement that includes the following provisions:

- a. the Settlement set forth in this Settlement Agreement is in the best interests of the class and within a range of fairness that responsible and experienced attorneys could accept considering all relevant risks and factors of litigation including one or both of the exceptions to the MFN;
- b. approval of the notice of the Settlement; and
- c. a schedule for a hearing by the Court after the notice period has expired to approve the Settlement.

4. In the event that the Court preliminarily approves the Settlement, Direct Purchaser Class Plaintiffs Counsel shall provide Direct Purchaser Class members with notice of the Settlement by means of first class mail and publication notice pursuant to Rule 23 of the Federal Rules of Civil Procedure and any order of the Court governing notice.

5. If the Court approves this Settlement Agreement, the Parties hereto shall jointly seek entry of an order and final judgment:

- a. as to the Class Action and each action consolidated therein, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to Direct Purchaser Class Plaintiffs and the Direct Purchaser Class of claims against Certain Defendants within the

meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

b. directing that, as to Certain Defendants, the Class Action and each action consolidated therein be dismissed with prejudice and, except as provided for herein, without costs;

c. reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement;

d. determining pursuant to Fed.R.Civ.P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable;

e. ordering dismissal with prejudice against the Direct Purchaser Plaintiffs and the members of the certified class who have not timely excluded themselves from the Class Action.

6. This Settlement Agreement shall become final and effective ("the Effective Date") upon the occurrence of all of the following three events:

a. the Court finally approves it as required by Rule 23(e) of the Federal Rules of Civil Procedure,

b. the Court enters a final judgment of dismissal with prejudice as to Certain Defendants against all Direct Purchaser Class Plaintiffs and other members of the Direct Purchaser Class who have not timely excluded themselves from the Class Action, and

c. the time for appeal from the Court's approval of this Settlement Agreement as described in (i) hereof and entry of a final judgment as described in (ii) hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

7. Settlement Payment to Direct Purchaser Class. Subject to the provisions herein, and in full, complete and final settlement of the Class Action, Certain Defendants shall pay the aggregate amount of \$28,000,000 in settlement of the Class Action to be paid in three installments. The first installment of \$18,000,000 shall be paid 30 days after the Court grants Class Plaintiffs' motion for preliminary approval. The remaining \$10,000,000 shall be paid in two installments as follows: \$7,000,000 on the first anniversary of the Court's order granting Class Plaintiffs' motion for preliminary approval, and \$3,000,000 on the second anniversary of the Court's order granting Class Plaintiffs motion for preliminary approval.



Each party obligated to contribute to the payment of the installment payments of \$7,000,000 and \$3,000,000 shall post within 30 days of the Court's Order of Preliminary Approval appropriate security for each of its individual payments. Appropriate security means any commercially acceptable form of security that cannot be superseded by creditor(s) in a bankruptcy proceeding, including but not limited to, letters of credit or other forms of guarantee by an accredited financial institution, or other guarantor acceptable to Class Counsel, pledges of securities, or first liens on real property of sufficient value. Final approval of the settlement will be conditioned upon the Court's determination that the security is sufficient and satisfactory.

The payments made by Certain Defendants in settlement of this Class Action are made in settlement of Direct Purchaser Class Plaintiffs' claims for civil antitrust compensatory damages. To the extent required by law, Certain Defendants shall report all or part of the payments in settlement of the Class Action on IRS Form 1099-MISC. The Parties agree that none of the claims and allegations of the Direct Purchaser Class are related to a conviction of any of the Certain Defendants in a criminal antitrust proceeding or to the plea of guilty or *nolo contendere* by any of the Certain Defendants.

The settlement funds shall be paid into an escrow account, held and administered by First State Trust Company (the "Settlement Fund"). The Settlement Fund shall be established and administered pursuant to an escrow agreement in the form attached hereto as Exhibit A. It is intended that the escrow account be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.46B-1 and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. All interest earned will stay with the principal.

8. In the event that this Settlement Agreement does not become final pursuant to paragraphs 5 and 13, the Settlement Fund, including any and all income earned thereon, shall be returned to Certain Defendants, less Settlement Fund administration and notice fees and costs incurred, and any release pursuant to paragraph 12 below shall be of no force or effect.

9. Direct Purchaser Class Plaintiffs and the other members of the Direct Purchaser Class who have not timely excluded themselves from the Class Action shall look solely to the Settlement Fund for settlement and satisfaction against Certain Defendants of all claims that are released hereunder.

10. The Direct Purchaser Class Plaintiffs and their counsel may be reimbursed and indemnified solely out of the Settlement Fund for litigation expenses related to the costs of notice of this Settlement to Direct Purchaser Class members and the administration of the Settlement Fund. Certain Defendants shall not be liable for any costs, or fees or expenses of any of Direct Purchaser Class Plaintiffs' respective attorneys, experts, advisors, agents and representatives, but such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund. In no event shall Certain Defendants have any liability with respect to the giving of notice of this Settlement to Direct Purchaser Class members, including, but not limited to, the expenses and cost of such notice.

11. After this Settlement Agreement becomes final pursuant to the provisions of paragraph 5 herein, counsel for Direct Purchaser Class Plaintiffs may seek approval from the Court to use the Settlement Fund to pay expenses and/or fees as awarded by the Court. Disbursements for litigation costs and expenses of distribution and administration of the Settlement Fund may be made from the Settlement Fund from time to time with approval of the Court. In no event shall Certain Defendants have any liability or responsibility with respect to the allocation, distribution and administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration.

12. Release. In return for consideration described in paragraph 7, upon the Court's Final Approval, each of the Defendants comprising Certain Defendants and each of their present and former parents, principals, partners, limited and general partners, affiliates, subsidiaries, divisions, stockholders, officers, directors, employees, representatives, agents, attorneys and any of its legal representatives (and the present and former partners, limited and general partners, parents, principals, affiliates, subsidiaries, divisions, stockholders, employees, officers, directors, representatives, attorneys, agents and legal representatives of each of the foregoing) and the predecessors, heirs, executors, administrators, successors and assigns of each such entity or individual (the "Released Party" or "Released Parties") shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that any Plaintiff or any other member or members of the Class who have not timely excluded themselves from the Class Action against the Released Party, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of any conduct alleged or which could have been alleged in the Class Action relating to the purchase of mushrooms, prior to the date hereof, with the exception of any claims based on purchases of mushrooms that may have arisen, arose or may arise in the ordinary course of business (the "Released Claims"). Each party will bear its own attorneys' fees and costs.

Specifically excluded from the Released Claims are any claims of Class members unrelated to the conduct alleged in any of the complaints consolidated in In re Mushroom Direct Purchaser Antitrust Litigation, 06-cv-0620, E.D. Pa., or that have arisen, arose, or may arise in the ordinary course of transacting business with the Released Parties.

13. If the Court does not find that an exception exists as to each MFN Defendant and/or declines to approve this Settlement Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment in substantially the form described in paragraph 5, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is reversed and the court on remand does not affirm the approval of this Settlement Agreement, then this Settlement Agreement shall be canceled and terminated, and shall become null and void. A modification or reversal on appeal of any amount of Direct Purchaser Class Plaintiffs' Counsels' fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment.

14. In the event that the Settlement does not become final in accordance with the terms hereof, then this Settlement Agreement shall be of no force or effect and, in any event,



the parties hereto agree that this Settlement Agreement whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Certain Defendants or of the truth of any of the claims or allegations contained in the complaint or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding. Certain Defendants expressly reserve all of their rights and defenses if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

15. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto and to the Released Parties to the extent permitted by law. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Direct Purchaser Class Plaintiffs and their counsel shall be binding upon all members of the Direct Purchaser Class and their assigns to the extent permitted by law.

16. This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

17. None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

18. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles.

19. Certain Defendants and the Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

20. No Admission. The Parties acknowledge that the Settlement is a compromise of disputed claims and not an admission of liability and that the Settlement and all the documents and all the facts related thereto will not be admissible against the Parties except in connection with any dispute related to enforcement of the Settlement itself.

21. Nothing in this Settlement Agreement shall be deemed to confer any rights or benefits, or impose any obligations, on any person other than the members of the Direct Purchaser Class and Released Parties.

22. The undersigned represent that each of them has the authority to execute this Agreement on behalf of their respective clients.

23. Counterparts. This Settlement Agreement may be executed in separate counterparts, which together shall be deemed to be one instrument. Signatures transmitted from facsimile or other electronic means shall be considered as valid signatures as of the date hereof.

24. Subject to the provisions of Paragraphs 12 and 13, each member of the Direct Purchaser Class expressly waives and releases, upon the Settlement Agreement becoming final, any and all provisions, rights and benefits conferred by California Civil Code Section 1542, which reads:

Section 1542. General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code Section 1542.

25. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

26. This Settlement Agreement constitutes the entire agreement among and between the Parties. This Settlement Agreement shall not be modified in respect except by a writing executed by all the Parties.

Dated: July 10, 2019

By: Bruce Gerstein/MS  
Bruce E. Gerstein, Esq.  
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Lead Counsel for Class Plaintiffs

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Counsel for Certain Defendants

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**IN RE MUSHROOM DIRECT  
PURCHASER ANTITRUST  
LITIGATION**

**THIS DOCUMENT RELATES TO:**

**All Actions**

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**Master File No. 06-0620**

**ESCROW AGREEMENT**

1. This escrow agreement (the “Escrow Agreement”) by and among (a) a group of Defendants identifying as H. Laddie Montague, Esq. of Berger Montague PC acting on behalf of “Certain Defendants”<sup>1</sup> and Donna M. Albani, Esq. of Donna M. Albani, Esquire, PC acting on behalf of M.D. Basciani & Sons, Inc. (“Defendants”); (b) Bruce E. Gerstein, Direct Purchaser Class Plaintiffs’ Lead Counsel, on behalf of Plaintiffs Wm. Rosenstein & Sons Co., Associated Grocers, Inc., M. Robert Enterprises, Inc., M.L. Robert, II, LLC, Market Fare, LLC, and Diversified Foods and Seasonings, LLC (collectively “Direct Purchaser Class Plaintiffs,” “named Plaintiffs,” or “Plaintiffs”), and on behalf of all members of the Direct Purchaser Class

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<sup>1</sup> “Certain Defendants” are Eastern Mushroom Marketing Cooperative, Inc. (“EMMC”); Robert A. Ferranto, Jr. t/a Bella Mushroom Farms; Brownstone Mushroom Farms, Inc.; To-Jo Fresh Mushrooms, Inc.; Country Fresh Mushroom Co.; Gino Gaspari & Sons, Inc.; Gaspari Mushroom Co., Inc.; Kaolin Mushroom Farms, Inc.; South Mill Mushroom Sales, Inc.; Modern Mushroom Farms, Inc.; Sher-Rockee Mushroom Farm, LLC; C&C Carriage Mushroom Co.; Phillips Mushroom Farms, Inc.; Louis M. Marson, Jr., Inc.; Monterey Mushrooms, Inc.; Forest Mushroom, Inc.; Harvest Fresh Farms, Inc.; Leone Pizzini and Son, Inc.; LRP-M Mushrooms LLC; United Farm Cooperative, Inc.; Masha & Toto, Inc., trading as M&T Mushrooms; Oakshire Mushroom Farm, Inc.; W&P Mushroom, Inc.; and John Pia.



in *In re Mushroom Direct Purchaser Antitrust Litig.*, Civil Action No. 06-cv-0620

(BMS)(E.D.Pa.) (the “Direct Purchaser Class Action”); and (c) First State Trust Company, as directed escrow agent (the “Directed Escrow Agent”) is entered into on

July 10, 2019, in connection with settlement agreements dated July 10, 2019 and July 11, 2019 (the “Settlement Agreements”). Capitalized terms not defined herein shall have the meanings specified in the Settlement Agreements. Lead Counsel (on behalf of Plaintiffs and the Direct Purchaser Class) and Defendants, by and through their respective counsel, have entered into their respective Settlement Agreements wherein they agreed, subject to the final approval of the Court in the Direct Purchaser Class Action (the “Court”), that the Direct Purchaser Class Action be dismissed with prejudice as to Defendants in exchange for payments by Defendants of the Settlement Fund, consisting of a combined total of \$32,000,000.00 (thirty two million dollars and no/100) in cash.<sup>2</sup>

2. The Directed Escrow Agent was selected by Direct Purchaser Class Plaintiffs’ Lead Counsel, to which selection Defendants consented. The parties hereto are entering into this Escrow Agreement in order to effectuate certain of the terms of the Settlement Agreements. H. Laddie Montague, Esq. of Berger Montague PC is signing on behalf of Certain Defendants, Donna M. Albani, Esq. of Donna M. Albani, Esquire, PC is signing on behalf of M.D. Basciani & Sons, Inc. and Bruce E. Gerstein, Direct Purchaser Class Plaintiffs’ Lead Counsel, is signing on behalf of the Direct Purchaser Class Plaintiffs. It is expressly understood by and agreed to by the parties hereto that the Settlement Agreement between

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<sup>2</sup> The Settlement with Certain Defendants is for \$28,000,000 (to be paid over two years in installments of \$18,000,000, \$7,000,000, and \$3,000,000) (“Certain Defendants’ Settlement Fund”) and the Settlement with M. D. Basciani & Sons, Inc. is for \$4,000,000 (to be paid over two years in installments of \$1,500,000, \$1,500,000 with interest, and \$1,000,000 with interest) (“M.D. Basciani & Sons, Inc.’s Settlement Fund”).

Direct Purchaser Class Plaintiffs and Certain Defendants and the Settlement Agreement between Direct Purchaser Class Plaintiffs and M.D. Basciani & Sons, Inc. are separate, distinct and independent Settlement Agreements which are in no way mutually dependent. It is further understood and agreed that counsel for Direct Purchaser Class Plaintiffs' decision to combine Certain Defendants' Settlement Fund and M.D. Basciani & Sons, Inc.'s Settlement Fund into one Settlement Fund governed by this Escrow Agreement is for its convenience only and that the failure of the Court to grant preliminary or final approval of the Settlement Agreement of only one of the Defendant parties hereto, i.e., either Certain Defendants or M.D. Basciani & Sons, Inc., shall not affect the validity of this Escrow Agreement as to the other Defendant whose Settlement Agreement is finally approved.

3. NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and considerations herein, the parties agree as follows:

(a) Pursuant to and in accordance with their respective Settlement Agreements, Defendants shall deposit with the Directed Escrow Agent their respective shares of the total Settlement Fund Amount of \$32,000,000.00 (thirty two million dollars and no/100) in cash.

(b) The Directed Escrow Agent shall be directed to invest and reinvest the Settlement Fund in United States Treasury Bills or other similar United States government obligations or federally insured bank certificates of deposit, until the Settlements become Final pursuant to paragraph 7 of Certain Defendants' Settlement Agreement and Paragraph 5 of M.D. Basciani & Sons, Inc.'s Settlement Agreement. Subsequent to the Settlements becoming Final, the Settlement Fund shall be invested as directed in writing by Lead Counsel for the Direct Purchaser Class Plaintiffs, Bruce E.

Gerstein, Esq., Garwin Gerstein & Fisher LLP, 88 Pine Street, 10th Floor, New York, NY 10005 (“Authorized Plaintiffs’ Counsel”). The term of any such investment directed by Authorized Plaintiffs’ Counsel shall not exceed ninety (90) days. All interest earned on the Settlement Fund shall become part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Defendants. Defendants shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

(c) Upon written authorization as described below in this paragraph, the Directed Escrow Agent may withdraw from the Settlement Fund disbursements sufficient for the Claims Administrator to pay costs associated with notice to the Direct Purchaser Class and taxes or estimated taxes payable by the Claims Administrator on behalf of the Settlement Fund and related expenses in accordance with paragraph 3(d)(4) herein, except that such withdrawals for notice to the Direct Purchaser Class and administration of the Settlements, before the Settlements become Final, may not exceed ten thousand dollars (\$10,000.00). Before the Settlements become Final, the written authorization required by this paragraph shall be granted by Authorized Plaintiffs’ Counsel, with copies to H. Laddie Montague, Esq. of Berger Montague PC acting on behalf of Certain Defendants and Donna M. Albani, Esq. of Donna M. Albani, Esquire, PC acting on behalf of M.D. Basciani & Sons, Inc. After the Settlements become final, the written authorization required by this paragraph shall be granted by Authorized Plaintiffs’ Counsel alone. Authorized Plaintiffs’ Counsel is authorized, after obtaining approval of Counsel for Defendants, to appoint an administrator (and any successors) for the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3) (the “Claims Administrator”). Authorized Plaintiffs’ Counsel shall be responsible for assuring that

the Claims Administrator qualifies as an “administrator” of the Settlement Fund within the meaning of Treasury Regulation Section 1.468B-2(k)(3) and is performing its duties hereunder. Defendants shall have no responsibility for any fees or the performance of the Claims Administrator.

(d) Provided the Court preliminarily approves the Settlements, the Claims Administrator shall, within thirty (30) days after the date thereof, take all steps necessary for qualifying the Settlement Fund as a “Qualified Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations. These obligations include, without limitation, the following:

(1) The Claims Administrator will prepare a “Regulation Section 1.468B-3 Statement” pursuant to Treasury Regulation Section 1.468B-3(e) on behalf of Defendants and provide copies to Counsel for Defendants for review and approval.

(2) The Claims Administrator will prepare and attach to the Settlement Fund’s first income tax return a “Regulation Section 1.468B-1 Relation Back Election” pursuant to Treasury Regulation Section 1.468B-1(j) for execution by Defendants and the Claims Administrator. The Claims Administrator will promptly forward a copy of the “Regulation Section 1.468B-1 Relation Back Election” to Counsel for Defendants within thirty (30) days after the date hereof.

(3) The Claims Administrator will timely prepare and file on behalf of the Settlement Fund (i) federal tax returns in accordance with Section 1.468B-2 of the Treasury Regulations and the other provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and (ii) all necessary state, local and foreign tax returns.

(4) Notwithstanding any effort, or failure, of the Claims Administrator and the parties hereto to treat the Settlement Fund as a “Qualified Settlement Fund” within the meaning of Section 1.468B-1 of the Treasury Regulations effective as of the date hereof, any additional tax liability or penalties incurred by Defendants resulting from income earned by the Settlement Fund (or the receipt of any payment under this paragraph 3(d)(4)) shall be reimbursed from the Settlement Fund in the amount of such additional tax liability or penalties upon written request from Defendants to the Directed Escrow Agent. The Directed Escrow Agent shall withdraw from the Settlement Fund (i) at the request of the Claims Administrator, monies to pay all applicable federal, state, local and foreign taxes which the Settlement Fund owes or is estimated to owe, as well as related expenses, and (ii) monies to pay any reimbursements to Defendants as described in this subparagraph (4).

(e) The Directed Escrow Agent shall be paid the fees described in Exhibit A. In addition, the Directed Escrow Agent shall be reimbursed for reasonable, out-of-pocket expenses, including attorneys’ fees arising from the Directed Escrow Agent’s management of the fund, telephone and facsimile transmission costs, postage (including express mail and overnight delivery charges), copying charges and the like. All such fees and expenses shall constitute a direct charge against the Settlement Fund.

The Directed Escrow Agent is authorized to, and may, disburse to itself, from the Settlement Fund, from time to time, the amount of reimbursement of out-of-pocket expenses due and payable hereunder. Prior to the Settlements becoming Final, the Directed Escrow Agent shall notify, and obtain approval from, Authorized Plaintiffs’ Counsel and Counsel for Defendants of any disbursement from the Settlement Fund to itself and provide copies of all related invoices and other statements. After the Settlements become Final, such



notification need be provided to, and approval obtained from, only Authorized Plaintiffs' Counsel. If there is any dispute as to entitlement to out-of-pocket expenses or attorneys' fees as described above, it will be submitted to the Court, which shall maintain continuing jurisdiction over the operation and effectuation of this Escrow Agreement and the escrowed funds. [See paragraph 3(l) below.]

(f) Upon authorization as described below in this paragraph, the Directed Escrow Agent may sell or present for redemption any investment described in paragraph 3(b) above, whenever it shall be necessary in order to provide funds to meet any payment required pursuant to this Escrow Agreement or the Settlement Agreements. Before the Settlements become Final, the authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel and Counsel for Defendants acting jointly. After the Settlements become Final, the authorization required by this paragraph shall be granted by Authorized Plaintiffs' Counsel alone.

(g) Only upon the Settlements becoming Final, may distributions (other than those contemplated herein to pay taxes and costs of notice and administration) be made as authorized by Court order. Upon the Settlements becoming Final, Authorized Plaintiffs' Counsel shall have the authority to appoint a Successor Escrow Agent and direct that all funds be transferred to the Successor Escrow Agent, which Successor Escrow Agent shall not be one of the Defendants or an affiliate of one of the Defendants. Upon the Settlements becoming Final, the interest of Defendants in the Settlement Fund shall cease in its entirety. Upon final approval of the Settlements, or any of them, Defendants shall be relieved of any responsibility for directing investments of the funds or disbursements from them, and shall have no liability whatsoever with respect to any investments, expenditures of the fund, taxes and/or tax filings,

administrative costs or fees, all of which shall be the responsibility of Direct Purchaser Class Plaintiffs' Lead Counsel.

In the event of any of the following: the Settlements are not preliminarily approved; the Settlements are not approved after a fairness hearing; the Settlements are approved but that approval is reversed, vacated, or otherwise materially modified on appeal; or the Settlement Agreements do not become Final for any reason; the Directed Escrow Agent shall, subject only to the expiration of any time deposit investment(s) not to exceed ninety (90) days, return the remaining Settlement Fund including all interest thereon, less any costs and expenses referred to in ¶¶ 3(c), 3(d)(4), and 3(e) and less fifty percent (50%) of the costs for notice of the Settlements, to Defendants as soon as practicable after the Directed Escrow Agent receives notice. All costs of notice and any administration costs that are incurred prior to final approval of the settlements shall be apportioned among Defendants whose settlement approval is the subject of the notice in proportion to their respective payments to the total Settlement Fund.

With respect to expenditures from the Settlement Fund prior to the Settlements becoming final, the expenditures shall be allocated between the Certain Defendants' Settlement Fund and M.D. Basciani & Sons, Inc.'s Settlement Fund in proportion to their respective payments to the total Settlement Fund. In the event of termination of the Settlement Agreements for any reason, the Settlement Fund shall be returned to Certain Defendants and M.D. Basciani & Sons, Inc. in proportion to their respective payments to the total Settlement Fund.

(h) The Directed Escrow Agent may rely upon any notice, certificate, instrument, request, paper or other documents reasonably believed by it to be genuine and to have been made, sent or signed by counsel for the respective party or parties in accordance with this Escrow Agreement, and shall not be liable for any action taken or omitted by it, consistent

with the terms hereof, in connection with the performance by it of its duties pursuant to the provisions of this Escrow Agreement, except for its own default, negligence or breach of the terms of this Escrow Agreement.

(i) The Directed Escrow Agent's acceptance and administration of the Settlement Fund shall constitute the submission of the Directed Escrow Agent to the jurisdiction of the Court in the above-described litigation for the purpose of carrying out this Escrow Agreement pursuant to the Settlement Agreements.

(j) The Directed Escrow Agent has been appointed in compliance with the Settlement Agreements and is subject to the orders of the Court.

(k) This Escrow Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania, without reference to choice-of-law principles.

(l) The Directed Escrow Agent is and shall be independent, provided that as parties hereto, Plaintiffs and Defendants shall be entitled to institute actions to compel or require performance by the Directed Escrow Agent of its obligations hereunder. The Directed Escrow Agent hereby agrees to submit to the jurisdiction and venue of the Court with respect to issues relating to the Settlement Fund for purposes of enforcement, clarification, or amendment of the provisions of this Escrow Agreement, and to comply with all directions given by that Court.

(m) The following authorizations, directions and acknowledgements are made by Plaintiffs through its authorized counsel.

1. Plaintiffs wish to engage UBS Financial Services Inc. and its affiliates ("UBS") as the broker for this relationship and authorize Directed Escrow Agent to open an account with UBS to effectuate the trading and investments for the Settlement Fund, to which engagement Defendants through their authorized counsel consent; and

2. Plaintiffs direct and authorize Directed Escrow Agent to enter into a UBS Client Relationship Agreement as agent for the Settlement Fund, to which Defendants through their authorized counsel consent; and

3. Plaintiffs and Defendants acknowledge that Directed Escrow Agent will be appointing UBS as sub-custodian with respect to the assets for the Settlement Fund; and

4. Plaintiffs and Defendants acknowledge that UBS will be directed to invest the settlement proceeds per the guidelines in section 3(b) as the brokerage agent; and any commissions and/or brokerage expenses will be disclosed on a per trade basis and will be within UBS firm guidelines and in accordance with account opening documentation.

(n) Upon sixty (60) days prior written notice to Authorized Plaintiffs' Counsel and, only if such prior written notice is sent prior to the Settlements becoming Final, Counsel for Defendants, the Directed Escrow Agent may resign and be discharged from its duties and responsibilities under this Agreement for any reason, and shall promptly deposit the Escrow Amount (Redemption Value) with a successor escrow agent pursuant to and in accordance with written instructions from Authorized Plaintiffs' Counsel and, only if prior to the Settlements becoming Final, Counsel for Defendants. If the Directed Escrow Agent is compelled to resign to comply with action by the government or self-regulating organizations (such as FINRA), the notice requirement set forth in this paragraph may be a reasonable time shorter than 60 days. If no successor escrow agent shall have been appointed by the effective date of the Directed Escrow Agent's resignation, the Directed Escrow Agent's sole responsibility shall thereafter be to hold the Escrow Amount (Redemption Value), invested until receipt of designation of a successor escrow agent or the disbursement of the Escrow Amount (Redemption Value) in accordance with written instructions from Authorized Plaintiffs' Counsel and, only if prior to the Settlements becoming Final, Counsel for Defendants; provided, however, that the Directed Escrow Agent

may petition the Court to name a successor, or may deposit the Escrow Amount (Redemption Value) in the registry of the Court having general jurisdiction.

(o) The Directed Escrow Agent may be removed from this Escrow Agreement at any time and thereby become discharged from the obligations hereby created subsequent to the date of discharge, by notice in writing given to the Directed Escrow Agent not less than thirty (30) days before such removal is to take effect. Prior to any of the Settlements becoming Final, such notice must be given by Authorized Plaintiffs' Counsel and Counsel for Defendants acting jointly; after the Settlements become Final, such notice may be given by Authorized Plaintiffs' Counsel alone. Upon approval of the Court, and subject to arrangements being made for a replacement Escrow Agent as specified in the next sentence, the Directed Escrow Agent may terminate this Escrow Agreement, by notice in writing given to the undersigned counsel not less than thirty (30) days before such termination is to take effect, and thereby become discharged from the obligations hereby created subsequent to the date of termination. In the event that the Directed Escrow Agent is removed or terminates this Escrow Agreement, arrangements shall be made for a replacement Escrow Agent, who shall assume the Directed Escrow Agent's duties hereunder as of the date and time that the replacement is to take effect. Prior to the Settlements becoming Final, such arrangements must be made by Authorized Plaintiffs' Counsel and Counsel for Defendants acting jointly; after the Settlements become Final, such arrangements may be made by Authorized Plaintiffs' Counsel alone.

(p) Copies of all notices and correspondence sent pursuant to this Escrow Agreement shall be served by mail upon Authorized Plaintiffs' Counsel, Counsel for Defendants, and the Directed Escrow Agent. After the Settlements become Final, such notices and correspondence need only be provided to Authorized Plaintiffs' Counsel.



(q) The Directed Escrow Agent shall, upon request as described below in this paragraph, advise counsel for the parties of any maturities, conversion privileges, and other matters of a like manner concerning the investments held in accordance with this Escrow Agreement. Before the Settlements become Final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel and Counsel for Defendants acting jointly. After the Settlements become final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel alone.

(r) The Directed Escrow Agent shall, upon request as described below in this paragraph, furnish to undersigned counsel the monthly Escrow Account statements or confirmations of transactions. Before the Settlements become Final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel and Counsel for Defendants acting jointly. After the Settlements become Final, the request required by this paragraph shall be made by Authorized Plaintiffs' Counsel alone.

(s) The parties reserve the right to modify this Escrow Agreement upon written agreement of all parties, subject to approval of the Court.

(t) The Directed Escrow Agent shall treat the fact of the Settlements and the Settlement Agreements referred to herein, as well as all facts or other information pertaining to the Settlements and the Settlement Agreements, as confidential and shall not disclose or use such information in any way other than as necessary to fulfill its role as Directed Escrow Agent and/or comply with any laws or regulations, including those of self-governing organizations, such as FINRA.

(u) This Escrow Agreement may be signed by all parties on separate copies, including by facsimile or other electronic means, and shall have full force and effect when all parties have signed one of the copies

IN WITNESS WHEREOF, the undersigned have executed and delivered this Escrow Agreement as of the date first written above.

By: 

First State Trust Company  
1 Righter Pkwy #120  
Wilmington, DE 19803

Directed Escrow Agent

By: \_\_\_\_\_

Bruce E. Gerstein, Esq.  
Garwin, Gerstein & Fisher, L.L.P.  
88 Pine Street, 10<sup>th</sup> Floor  
New York, NY 10005  
(212) 398-0055  
[bgerstein@garwingerstein.com](mailto:bgerstein@garwingerstein.com)

Lead Counsel for Class Plaintiffs

By: \_\_\_\_\_

H. Laddie Montague, Jr.  
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Philadelphia, PA 19103  
(215) 875-3010  
[hlmontague@bm.net](mailto:hlmontague@bm.net)

Counsel for Certain Defendants

By: \_\_\_\_\_

Donna M. Albani, Esquire  
Donna M. Albani, Esquire, PC  
11 Hampton Lane  
Glen Mills, PA 19342  
(610) 459-8858  
[dmaesq@comcast.net](mailto:dmaesq@comcast.net)

Counsel for M.D. Basciani and Sons, Inc.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Escrow Agreement as of the date first written above.

By: \_\_\_\_\_  
First State Trust Company  
1 Righter Pkwy #120  
Wilmington, DE 19803

Directed Escrow Agent

By: Bruce Gerstein/AS  
Bruce E. Gerstein, Esq.  
Garwin, Gerstein & Fisher, L.L.P.  
88 Pine Street, 10<sup>th</sup> Floor  
New York, NY 10005  
(212) 398-0055  
bgerstein@garwingerstein.com

Lead Counsel for Class Plaintiffs

By: H. Laddie Montague, Jr.  
H. Laddie Montague, Jr.  
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hlmontague@bm.net

Counsel for Certain Defendants

By: \_\_\_\_\_  
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(610) 459-8858  
[dmaesq@comcast.net](mailto:dmaesq@comcast.net)

Counsel for M.D. Basciani and Sons, Inc.

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By: \_\_\_\_\_  
First State Trust Company  
1 Righter Pkwy #120  
Wilmington, DE 19803

Directed Escrow Agent

By: Bruce Gerstein/AS  
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hlmontague@bm.net

Counsel for Certain Defendants

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Glen Mills, PA 19342  
(610) 459-8858  
dmaesq@comcast.net

Counsel for M.D. Basciani and Sons, Inc.



**EXHIBIT A**  
**TO**  
**ESCROW AGREEMENT dated July 10, 2019**

<b>Escrow Agent Fees <sup>1</sup></b>	<b>Rate</b>
<b>Annual Escrow Fee (charged and due quarterly)</b>	<b>[TBD per schedule below]</b>
<b>Escrow Value</b>	<b>Annual Fee</b>
Up to \$100,000,000	\$20,000
\$100,000,001 - \$250,000,000	\$30,000
\$250,000,001 - \$500,000,000	\$40,000
\$500,000,001 - \$1,000,000,000	\$50,000
Over \$1,000,000,000	\$55,000

<sup>1</sup> The annual escrow fee is charged and due quarterly upon acceptance of the escrow account.

<b>Activity Fees</b>	<b>Per Item Charge</b>
Disbursement Request	\$25
Per Outgoing US Wire (in addition to above)	\$15
Stop Payment Request	\$20

**Other Services & Fees**

- First State Trust Company ("FSTC") reserves the right to refer any or all escrow documents for legal review before execution. Legal fees (billed on an hourly basis) and expenses for this service will be billed to, and paid by, the customer. If appropriate and upon request by the customer, FSTC will provide advance estimates of these legal fees.
- Other extraordinary services, including tax preparation and filing, will be quoted separately based on the scope of the activity
- Out-of-Pocket expenses will pass through to the accounts, including, but not limited to, overnight mail, replacement tax forms, external legal or professional costs, and other extraordinary services for which compensation is not expressly stated.

**Standard Disclosures**

**Fee Disclosure**

The Department of Labor (DOL) issued new rules that require certain types of ERISA retirement plan service providers to disclose new fee information directly to plans. First State Trust Company (FSTC) has incorporated a new disclosure to provide details related to direct revenue paid to FSTC. FSTC maintains standard fee schedules for each service/product offered to clients which is executed at account opening. FSTC mails fee disclosure information annually to clients pertaining to indirect revenue which FSTC may collect based upon the investments of the trust account(s).

First State Trust Company provides a daily "sweep" process for the investment of cash assets in FSTC Accounts. Cash can be either invested in an Institutional Money Market fund managed by Northern Trust (NT) such as the NT Institutional US Government Select Portfolio or an Insured Deposit Program (IDP) provided by Total Bank Solutions (TBS)

or both. FSTC will receive 0.06% on assets invested in the NT US Government Select Portfolio or 0.10% on assets invested in the IDP as part of a service fee and daily processing.

FSTC fees are either invoiced or directly charged to the accounts. The primary method is direct charge. If you have any questions regarding FSTC fees (direct or indirect), please contact your Trust Officer at 800.554.1364.

#### **Disclosure Regarding Retention of Float**

The Department of Labor field bulletin 2002-3 requires that service providers to plan clients, such as banks, broker dealers and record keepers, provide their clients with adequate information regarding float. Our policy of requiring the use of a sweep vehicle minimizes or eliminates the amount of float earned on un-invested cash contributed to the plan. Where FSTC provides you with distribution services, an FSTC agent earns float on money set aside for payment of outstanding but uncashed benefit distribution checks, generally from the date on the face of the checks to participants until the date that either the recipient cashes the check or the check is cancelled and the underlying funds are returned to the trust. FSTC or its agent generally mails checks in advance of the date on the face of the checks, with the intention that the payees receive the checks by such date. The float rate of return is currently based upon and generally approximates the then applicable federal funds rate (a publicly available average rate of all federal funds transactions entered into by traders in the federal funds market on a given date). The federal funds rate is published in the business press. If, in the future, a different rate is more appropriate, FSTC will notify you of any changes. Additional information is available to you upon request. If you have any questions about the float, please contact your FSTC Trust Officer.

#### **Mutual Fund Disclosure**

Mutual funds are sold by prospectus. You may obtain a prospectus from your Financial Advisor or the fund company. Please read the prospectus and all other fund materials carefully before investing. Be advised that depending upon the share class, FSTC may collect a portion of the annual distribution (12b-1) and or service and service related fees from the fund company. All ETF trades placed through FSTC are subject to a transaction fee (presently \$.01 per share) that is paid to our ETF trading vendor and the fees are assessed directly against the respective trades.