

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

**In re SunTrust Banks, Inc. 401(k)
Plan Affiliated Funds ERISA
Litigation**

**CIVIL ACTION FILE NO.
1:11-CV-784-ODE**

PLAN OF ALLOCATION

The *Parties* reached an agreement to settle the lawsuit for a cash payment by *Defendants*¹ in the amount of \$29 million (the *Settlement Fund*). The *Settlement Fund* shall remain in an escrow account within the meaning of Treas. Reg. § 1.468B-1 (the *Qualified Settlement Fund*) to be established by *Class Counsel* no later than five business days after entry of the *Preliminary Approval Order* and trusted by the *Escrow Agent*. This *Plan of Allocation* describes how the *Net Settlement Amount*, that is, the *Settlement Fund* plus any interest earned thereon, less (1) any attorneys' fees, expenses and costs (including any *Service Awards* to *Class Representatives*), (2) the expense of *Class Notice*, and (3) other *Administrative Expenses* (including taxes and tax expenses), are allocated to *Class Members*.

¹ The capitalized italicized terms in this *Plan of Allocation* have the same meaning as they appear in the [Proposed] *Settlement Agreement*, filed concurrently.

After the Court enters the *Order and Final Judgment* and after the *Effective Date*, the *Settlement Administrator* shall distribute the *Net Settlement Amount* to *Class Members* from the *Qualified Settlement Fund* as promptly as possible pursuant to this *Plan of Allocation*. The *Settlement Administrator* will instruct the *Defendants* to direct the *Plan*'s recordkeeper to credit the individual *Plan* accounts of each *Current Participant* in accordance with the *Plan of Allocation*. The *Settlement Administrator* will effect distribution to *Class Members* who are *Former Participants* pursuant to the instructions indicated in the *Former Participant Distribution Form* (Exhibit A-1 hereto), or if no acceptable, completed form is received by the deadline, in the form of a check subject to applicable tax withholdings.

1. Assumptions

The *Plan of Allocation* is based on quarterly balances during the *Class Period* in the eight *SunTrust Funds*, all of which were offered by the SunTrust Banks, Inc. 401(k) Plan ("*Plan*") during the *Class Period*. There are 29 calendar quarters in the *Class Period*, which runs from March 11, 2005 through December 31, 2012.

For purposes of the *Plan of Allocation*, the first month of the *Class Period* is treated as a full quarter because *Class Member* balances are available for March 31, 2005 and treating the data as of March 31, 2005 as representing a full quarter in

the *Class Period* simplifies and streamlines administration and implementation of the *Plan of Allocation*. The last quarter of the *Class Period* is the fourth quarter of 2012.

The *Net Settlement Amount* is allocated in proportion to each *Class Member's* investments during the *Class Period* as follows: *Class Members* investing in the *Surviving Funds* are allocated a total of 90 percent of the *Net Settlement Amount*, which are allocated to each such *Class Member* on a *pro rata* basis; and *Class Members* investing in the *Dismissed Funds* are allocated a total of 10 percent of the *Net Settlement Amount*, which are allocated to each such *Class Member* on a *pro rata* basis. However, if a *Class Member's* calculated allocation is less than \$10, it will be considered a *De Minimis Amount* that will not be distributed to that *Class Member* pursuant to the allocation method described below ("*Allocation Method*").

Each *Class Member* shall receive his or her *Class Member Distribution* as determined by the *Settlement Administrator* under the *Allocation Method*. The *Settlement Administrator* will prepare *Allocation Method* calculations within 10 calendar days after the *Effective Date*, unless *Class Counsel* directs the *Settlement Administrator* in writing to use a later date, and provide the calculations to *Class Counsel*, who will immediately provide the *Allocation Method* calculations to *Defense Counsel*. Within 20 calendar days after sending the calculations to

Defense Counsel, the *Settlement Administrator* will create the *Plan Distribution Allocation File* and provide it to *Class Counsel*, who will immediately provide the *Plan Distribution Allocation File* to *Defense Counsel*.

To be eligible for a distribution from the *Net Settlement Amount*, a *Class Member* must be a *Current Participant*, *Beneficiary*, a *Former Participant*, or *Alternate Payee* of such a person. *Current Participants* shall receive their settlement payments as contributions to their Plan account(s), except as provided below. *Former Participants* shall receive their settlement payments as provided below.

A *Beneficiary* will receive their payment as described in this *Plan of Allocation* in an amount corresponding to their entitlement as a *Beneficiary* of a *Current Participant* or of a *Former Participant* with respect to which the payment is made. An *Alternate Payee* will receive a payment if and to the extent they are entitled to receive a portion of a *Current Participant's* or *Former Participant's* allocation under this *Plan of Allocation* as if they are a *Former Participant*. The *Settlement Administrator* shall have sole and final discretion and responsibility to determine the amounts of payment to *Beneficiaries* and *Alternate Payees* in accordance with the *Plan of Allocation* and as ordered by the Court.

No amount shall be distributed to a *Class Member* that is less than \$10, the *de minimis* amount. All such *de minimis* amounts shall be retained in the *Qualified*

Settlement Fund for distribution with the residual amount, as described below in Section 3.

2. Allocation Method

Each *Class Member* shall receive his or her *Class Member Distribution* as determined under the *Allocation Method* calculations described in this Plan of Allocation. The *Settlement Administrator* will complete these calculations within 30 calendar days after the *Effective Date*, unless Class Counsel in writing directs another date, and will create the final *Plan Distribution Allocation File* as described in section 3.a below.

Step One – Divide *Net Settlement Amount* between *Surviving Funds* and *Dismissed Funds* as follows:

- (a) *Surviving Funds Net Settlement Amount* is the *Net Settlement Amount* multiplied by 0.9.
- (b) *Dismissed Funds Net Settlement Amount* is the *Net Settlement Amount* multiplied by 0.1.

Step Two – Allocation of *Surviving Funds*:

- (c) Determine each *Single Surviving Fund Class Member Quarterly Balance* in each of the *Surviving Funds* at the close of each quarter of the *Class Period* from the reasonably available data provided by *Defendants*.
- (d) Determine each *Single Class Member Quarterly Balance in All Surviving Funds* at the close of each quarter of the *Class Period* for each *Class Member* by adding together balances for all *Surviving Funds* for a single quarter from (c) above.

- (e) Determine each *Single Class Member Surviving Funds Aggregate Balance* by adding together all of the quarters in the *Class Period* from (d) above.
- (f) Determine *Aggregate Surviving Funds Balance* for all *Class Members* by adding together each *Single Class Member Surviving Funds Aggregate Balance* from (e) above.
- (g) Determine each *Class Member Distribution of Surviving Funds* by dividing each *Single Class Member Surviving Funds Aggregate Balance* by the *Aggregate Surviving Funds Balance for all Class Members*, and multiply the result by the *Surviving Funds Net Settlement Amount* $((e)/(f)) \times (a)$.

Step Three – Allocation of *Dismissed Funds*:

- (h) Determine each *Single Dismissed Fund Class Member Quarterly Balance* in each of the *Dismissed Funds* at the close of each quarter of the *Class Period* from the reasonably available data provided by *Defendants*.
- (i) Determine each *Single Class Member Quarterly Balance in All Dismissed Funds* for the close of each quarter of the *Class Period* for each *Class Member* by adding together balances for all *Dismissed Funds* for a single quarter from (h) above.
- (j) Determine each *Single Class Member Dismissed Funds Aggregate Balance* by adding together all of the quarters in the *Class Period* from (i) above.
- (k) Determine *Aggregate Dismissed Funds Balance* for all *Class Members* by adding together each *Single Class Member Dismissed Funds Aggregate Balance* from (j) above.
- (l) Determine each *Class Member Distribution of Dismissed Funds* by dividing each *Single Class Member Dismissed Funds Aggregate Balance* by the *Aggregate Dismissed Funds Balance for all Class Members*, and multiply the result by the *Dismissed Funds Net Settlement Amount* $((j)/(k)) \times (b)$.

Step Four – Individual *Class Member Distribution*

- (m) Determine each preliminary *Class Member* distribution by adding together the *Class Member Distribution of Surviving Funds* and the *Class Member Distribution of Dismissed Funds* ((g)+(1)).
- (n) Determine each *Class Member Distribution* by adding the *De Minimis* amounts determined in (m) on a *pro-rata* basis only to the *Class Member* distributions determined in (m) for *Class Members* whose total in (m) is greater than a *De Minimis* amount.

Neither *Defendants* or *Defense Counsel* shall have any responsibility for or liability whatsoever with respect to the *Plan of Allocation*, including, but not limited to, the determination of the *Plan of Allocation* or the reasonableness of the *Plan of Allocation*.

3. *Allocation Administration*

a. Plan Distribution Allocation File

Within 10 calendar days after the *Effective Date*, unless *Class Counsel* directs a different date in writing, the *Settlement Administrator* shall provide a preliminary electronic file containing the name, most current address, most current personal email address if available, Social Security number, employee number if available and efficacious, status as *Current Participant* or *Former Participant*, and amount of the *Class Member Distribution* for each *Class Member* calculated pursuant to the *Allocation Method* (also including the identification and calculation

for *Class Members* whose preliminary distribution was a *De Minimis Amount*) to *Class Counsel* which will immediately provide the file to *Defense Counsel*.

Defendants shall have 20 calendar days to review the preliminary electronic file for accuracy. The *Parties* will work cooperatively and in good faith to resolve any inaccuracy in the electronic file. Within 20 calendar days after *Class Counsel* provides the preliminary electronic file to *Defense Counsel*, unless *Class Counsel* directs a different date in writing, the *Settlement Administrator* will provide an electronic *Plan Distribution Allocation File* containing the name, most current address, most current personal email address if available, Social Security number, employee number if available and efficacious, status as *Current Participant* or *Former Participant*, and final amount of the *Class Member Distribution* for each *Class Member* calculated pursuant to the *Allocation Method* (also including the identification and calculation for *Class Members* whose preliminary distribution was a *De Minimis Amount*) to *Class Counsel*, which will immediately provide the file to *Defense Counsel*.

b. Current Participant Distribution

Within three business days after the electronic *Plan Distribution Allocation File* is provided to the *Defense Counsel*, *Class Counsel* will provide written and telephone notice to the *Plan Administrator* and *Defense Counsel* that a transfer will be made from the *Qualified Settlement Fund* to the *Plan* trust. Within three

business days after the written and telephone notice is provided to the *Plan Administrator* and *Defense Counsel*, *Class Counsel* will direct the *Escrow Agent* in writing and by telephone to transfer from the *Qualified Settlement Fund* the aggregate amount of all *Class Member Distributions* for *Current Participants* identified in the *Plan Distribution Allocation File*, to be deposited to the *Plan* trust.

Within three business days after receiving notice from *Class Counsel* to transfer funds from the *Qualified Settlement Trust* to the *Plan* trust, the *Escrow Agent* shall effect a transfer from the *Qualified Settlement Fund* to the *Plan*'s trust of the aggregate amount of all *Class Member Distributions* for *Current Participants* contained in the *Plan Distribution Allocation File*. Within three business days after the *Escrow Agent* has transferred the *Class Member Distributions* for *Current Participants* from the *Qualified Settlement Trust* to the *Plan* trust, *Class Counsel* will direct the *Plan* recordkeeper to credit the individual *Plan* accounts of each *Current Participant* identified in the *Plan Distribution Allocation File* from the *Plan* trust an amount equal to that stated in the *Plan Distribution Allocation File* (no distribution should be made of *De Minimis Amounts*). The *Plan* recordkeeper shall credit these amounts to the *Plan* accounts of *Current Participants* within 20 calendar days of receiving direction from *Class Counsel* to allocate the *Class Member Distributions* to *Current Participants*' *Plan* accounts.

The *Class Member Distribution* for each *Current Participant* will be reflected in each *Current Participant's Plan* account as pre-tax dollars, and will be invested in accordance with such *Current Participant's* investment elections then on file with the *Plan's* recordkeeper. If there is no investment election on file for any *Current Participant*, then such *Current Participant* shall be deemed to have directed such payment to be invested in the *Plan's* "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.

Within 30 calendar days after receiving direction from *Class Counsel* to allocate the *Current Participant Class Member Distributions*, the *Plan Administrator* will identify to *Class Counsel* and the *Settlement Administrator* the *Current Participants* who no longer have an *Active Account* and return for deposit to the *Qualified Settlement Fund* all such *Class Member Distributions*. The *Settlement Administrator* will treat any such *Current Participant* as if he or she were a *Former Participant* for purposes of that distribution only, and, for instance, mail that *Current Participant* a *Former Participant Distribution Form* (for distributions \$200 or greater), withhold applicable federal and state taxes, if any, from any check issued from the *Qualified Settlement Fund*, report necessary tax withholdings, and mail tax forms.

c. Former Participant Distribution

Within 45 calendar days after the *Effective Date*, the *Settlement Administrator* shall create and distribute a *Former Participant Distribution Form* to each *Former Participant* who has a *Class Member Distribution* of \$200 or greater at the last-known address, provided by the *Plan* recordkeeper, or in the case of ambiguity or uncertainty, to the address of such person as determined by the *Settlement Administrator* using commercially reasonable means, unless *Class Counsel* directs a different date in writing. This form will offer *Former Participants* the opportunity to elect that their *Class Member Distribution* be 1) rolled over to an individual retirement account or other eligible tax-qualified employer plan which they identify, provided that the *Former Participant* supplies adequate information to the *Settlement Administrator* to effect the rollover; or 2) distributed to the *Former Participant* subject to applicable tax withholdings.

Within 100 calendar days after the mailing/emailing date of the *Former Participant Distribution Form*, *Former Participants* may send the *Plan Administrator* their preference on the *Former Participant Distribution Form* (“*Former Participant Distribution Election Period*”). *Former Participants* who fail to timely return an acceptable *Former Participant Distribution Form* will receive their settlement payments by check subject to tax withholdings.

Within 30 calendar days after the expiration of the *Former Participant Distribution Election Period*, the *Settlement Administrator* shall provide *Class Counsel* an electronic file indicating each *Former Participant* and whether each receives their *Class Member Distribution* through a payment not subject to tax (a rollover payment), or by check after applicable tax withholdings. Within 60 calendar days after the expiration of the *Former Participant Distribution Election Period*, the *Settlement Administrator* will either 1) distribute the rollover payment elected by any such *Former Participant* (if the conditions for such rollover are satisfied), or 2) issue a payment subject to any applicable tax withholdings to any such *Former Participant* to the last known address of the *Former Participant* provided by the *Plan* recordkeeper or by the *Former Participant*, or in the case of ambiguity or uncertainty, to the address of such person as determined by the *Settlement Administrator* using commercially reasonable means, from the *Qualified Settlement Fund*.

The checks making any type of distribution to *Former Participants* will be prepared by and signed by the *Settlement Administrator* and drawn on the *Qualified Settlement Fund*. For each such check issued, the *Settlement Administrator* shall (i) calculate and withhold any applicable taxes, if any, for each such *Class Member Distribution* to a *Former Participant*; (ii) report such distributions and remit any applicable tax withholdings for each such *Class*

Member Distribution to a *Former Participant* to the Internal Revenue Service and applicable state revenue agents under the Employer Identification Number generally used for distributions from the *Plan*; and (iii) issue the appropriate tax forms to the *Former Participant*.

All checks issued in accordance with this *Plan of Allocation* shall expire no later than 120 calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date will be voidable at the election of the *Settlement Administrator* and shall revert to the *Qualified Settlement Fund*.

Neither *Defendants*, *Defense Counsel*, nor *Class Counsel* shall have any responsibility for or liability whatsoever with respect to any tax advice given to the *Current Participants* or the *Former Participants*.

4. Final Settlement Administration

Within 90 calendar days after the deadline for *Former Participants* to deposit or forward any *Class Member Distribution*, the *Settlement Administrator* shall prepare and provide to *Class Counsel* and *Defense Counsel* a data file listing each *Class Member* who received a *Class Member Distribution* from the *Qualified Settlement Fund*, any assigned identification number, their *Current Participant* or *Former Participant* status, their Social Security number, their address, their email address if available, amount and date of their *Class Member Distribution*, and the amount of tax withholdings (if applicable).

Any amount remaining in the *Qualified Settlement Fund* after the distributions pursuant to the *Allocation Method* have been fully, finally and completely implemented, including any amounts set aside but not used for *Administrative Expenses*, and within 10 calendar days after the *Settlement Administrator* having provided to *Class Counsel* and *Defense Counsel* the list of all disbursements to *Class Members* with identifying information, will be distributed as follows. *Class Counsel* will direct the *Escrow Agent* in writing and by telephone to transfer residual amounts from the *Qualified Settlement Fund* as a contribution to a non-profit, nonsectarian charitable or educational organization promoting retirement security selected by *Class Counsel* and unaffiliated with any *Class Counsel* and any *Named Plaintiff*. The selected organization is subject to *Defendants'* approval (which will not be unreasonably withheld). Any unresolvable dispute between *Class Counsel* and *Defendants* regarding the recipient of the residual amount in the *Qualified Settlement Fund* will be presented to mediator Robert A. Meyer, or another mediator agreed-upon by *Class Counsel* and *Defendants* if Meyer is unavailable. The *Settlement Administrator* shall disburse the residual amount in the *Qualified Settlement Fund* to the non-profit, nonsectarian charitable or educational organization promoting retirement security selected by *Class Counsel* within 20 calendar days of such instruction. In no event

shall any portion of the *Net Settlement Amount* be paid to *Defendants* or be used to offset expenses otherwise paid by *Defendants*.

Within 21 calendar days after the *Settlement Administrator* disburses the residual *Net Settlement Amount* to the non-profit, nonsectarian charitable or educational organization promoting retirement security selected by *Class Counsel*, the *Settlement Administrator* shall send a written certification to *Class Counsel* stating that all *Administrative Expense* disbursements have been made.

5. Tax-Related Issues and General Responsibilities

The payments made from the *Qualified Settlement Fund* to effect settlement distributions for *Current Participants* who are eligible for a *Class Member Distribution* constitute restorative payments in accordance with Revenue Ruling 2002-45 and shall not be deemed to constitute a taxable distribution to any *Class Member*.

The *Defendants*, *Defense Counsel*, *Class Counsel*, and *Class Representatives* will provide no tax advice to the *Class Members* and make no representation regarding the tax consequences of any of the settlement payments described in the *Settlement Agreement*. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the *Settlement Administrator*, as required by law in

respect of all payments made under the *Settlement Agreement*.

Each *Class Member* who receives a payment under this *Settlement Agreement* shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each *Class Member* shall hold the *Parties, Defense Counsel, Class Counsel*, and the *Settlement Administrator* harmless from any tax liability, including penalties and interest, related in any way to payments under the *Settlement Agreement*, and shall hold the *Parties, Defense Counsel, Class Counsel*, and the *Settlement Administrator* harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

Neither the *Parties, Class Counsel, Class Representatives* nor *Defense Counsel* shall have any responsibility or liability whatsoever with respect to: (i) any act, omission, or determination of the *Settlement Administrator*, or any of their respective designees or agents, in connection with the administration of the *Gross Settlement Amount* or otherwise; (ii) the management, investment, or distribution of the *Qualified Settlement Fund*; (iii) the administration or allocation of the *Net Settlement Amount*; (iv) the determination, administration, calculation, or payment of any claims asserted against the *Qualified Settlement Fund*; (vi) any losses suffered by, or fluctuations in the value of, the *Qualified Settlement Fund*; or (vii)

the payment or withholding of any taxes and/or expenses incurred in connection with the taxation of the *Qualified Settlement Fund* or tax reporting, or the filing of any *Tax Filings*. Further, neither the *Defendants* nor *Defense Counsel* shall have any responsibility for, or liability whatsoever with respect to any act, omission, or determination of *Class Counsel* in connection with the administration of the *Gross Settlement Amount* or otherwise.

6. Modifications

The Court may approve the Plan, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan will be posted on the Settlement Website, [www.xxxxxxxxx.com] within five business days of the modification.