

STEIN, BLIABLIAS, MCGUIRE, PANTAGES & GIGL, LLP

ATTORNEYS AT LAW

P.O. BOX 460

354 EISENHOWER PARKWAY

LIVINGSTON, NEW JERSEY 07039-0460

(973) 992-1100

sbmpg@worldnet.att.net

FAX (973) 535-3990

COUNSEL

ROBERT L. PENZA*

LOUIS J. PANTAGES (R)

CYNTHIA A. STEIN** (R)

*MEMBER NJ & NY BARS

**MEMBER NJ & PA BARS

◇CERTIFIED CIVIL TRIAL ATTORNEY

FILE NO.

2520032900020

December 30, 1999

4900-0000

Office of Employee Benefits Security
Labor Management Service Administration
U.S. Department of Labor
Washington, DC 20216

RE: Notice of Plan of Deferred Compensation

Gentlemen:

The undersigned, on behalf of the below employer, hereby files the following information with respect to the employer's plan of deferred compensation as required by DOL. Reg. Sec. 2520.104-23:

Name and Address of Employer: Apollo Distributing Co.
128 Passaic Avenue
P.O. Box 959
Fairfield, NJ 07006

Federal Employer ID No.: 22-1419093

The employer maintains a plan of deferred compensation primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees. The Plan is dated July 1, 1999, and a copy is enclosed herewith.

There are three employees covered under the plan.

Very truly yours,

STEIN, BLIABLIAS, MCGUIRE, PANTAGES & GIGL, LLP

JUDSON M. STEIN

JMS:ms

Enc.

Certified Mail Receipt No. Z-338-034-517

cc: Mr. Keith A. Slobodien (w/enc.)
Michael R. Schechner, CLU (w/enc.)

APOLLO DISTRIBUTING COMPANY

NON QUALIFIED

DEFERRED COMPENSATION PLAN

FOR THE BENEFIT

OF

CERTAIN EMPLOYEES

PLAN OF DEFERRED COMPENSATION

Effective July 1, 1999, Apollo Distributing Company established this Deferred Compensation Plan (sometimes being referred to as the "Plan") for the benefit of certain of its Employees, as listed on Schedule A attached hereto (as such Schedule may from time to time be revised), it being the intention of the parties hereto to provide such Employees a legal medium to defer certain elective amounts of their compensation on a non-qualified basis. If the Employer determines to do so, the Plan may be submitted to the Internal Revenue Service ("IRS") for an opinion as to its legal status to include whether effective non-qualified deferral of income has been effectuated. The Plan Sponsor is not hereby obligating itself to so submit the Plan.

With regard to the requirements of the IRS as established by Revenue Procedure 92-64, the adoption of the Plan is specifically conditioned upon the following principles:

1. any assets contributed to this Plan will be held herein subject to the claims of the Employer's creditors in the event of the Employer's insolvency, until the benefits prescribed herein are paid in such manner and at such times as are specified in the Plan; and
2. this Plan will constitute an unfunded arrangement and an unfunded plan maintained for the purpose of providing deferred compensation for a select group of management or highly compensated employees for purposes of Title I of the Employee Retirement Security Act of 1974.

This Agreement will serve as the "plan document" which governs the distribution of benefits to the Employees and their Beneficiaries.

ARTICLE 1 - DEFINITIONS

The following words and phrases, when used herein, unless their context clearly indicates otherwise, shall have the following meanings:

1.1 "Anniversary Date" means January 1 of each year.

1.2 "Beneficiary" means each Employee, his or her spouse, or the other person or persons (including his or her estate) designated by each Employee in writing to receive any of the benefits payable under this Agreement.

1.3 "Board" means those persons who serve on the Board of Directors of the Employer and to whom the executives of the Employer report and receive direction.

1.4 "Bookkeeping Account" means the account maintained for each Employee, reflecting contributions made on his or her behalf pursuant to one or more deferred compensation agreement(s) with the Employer, in accordance with Section 2.1, as well as any additions or subtractions thereto from the investment thereof in accordance with Section 2.2 and as well as any withdrawals or forfeitures thereof in accordance with Section 3.8.

1.5 "Change of Control" means the purchase or other acquisition (other than by descent or devise) by any person, entity or group of persons within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934 ("Act"), or any comparable successor provisions, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Act) of more than fifty (50%) percent of either the outstanding shares of common stock or the combined voting power of the Employer's then outstanding shares of common stock or the combined voting power of the Employer's then outstanding voting securities entitled to vote generally or the approval by the stockholders of the Employer of a reorganization, merger, or consolidation, in each case, with respect

to which persons who were stockholders of the Employer immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than fifty (50%) percent of the combined voting power entitled to vote generally in the election of directors of such reorganized, merged or consolidated Employer's then outstanding securities, or a liquidation or dissolution of the Employer or of the sale of all or substantially all of the Employer's assets.

1.6 **"Deferred Retirement"** means the retirement of an Employee subsequent to the continued employment of such Employee after his or her Normal Retirement Date.

1.7 **"Disability Retirement"** means the retirement of an Employee who is deemed to be permanently and totally disabled. Permanent and total disability means the inability of an Employee to engage in the normal activities of the Employee's duties of employment with the Employer by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The permanence and degree of such impairment shall be supported by medical evidence satisfactory to the Board.

1.8 **"Employee" or "Plan Participant"** means each of those persons listed on Schedule A attached hereto (as such Schedule may from time to time be revised).

1.9 **"Employer"** means Apollo Distributing Company, and any other organization that is a successor to Apollo Distributing Company.

1.10 **"Normal Retirement Date"** means an Employee's retirement from active employment with the Employer on or after attaining the age of sixty-five (65) years of age.

1.11 **"Plan" or "Agreement"** means this agreement as set forth herein, as may be amended from time to time with the consent of the Employer and each Employee.

1.12 "Plan Year" means each calendar year during the term of this Plan.

1.13 "Termination of Employment" means the termination of employment of an Employee for any reason other than his or her retirement on or after his or her Normal Retirement Date, Disability Retirement pursuant to the terms of this Plan or his or her death.

1.14 "Vested" portion of an Employee's Bookkeeping Account shall have the meaning set forth in Section 3.4 (a) and "Nonvested" portion of an Employee's Bookkeeping Account shall have the meaning set forth in Section 3.4(c).

ARTICLE II - CONTRIBUTIONS

2.1 Employee Deferred Compensation

From time to time, each Employee may elect to enter into a written, deferred compensation agreement with the Employer. The terms of any such deferred compensation agreement shall provide that the Employee agrees to defer a portion of his or her compensation from the Employer that has not yet been earned by the Employee. In consideration of such agreement, the Employer will make contributions on a monthly (or other convenient periodic basis) to the Employee's Bookkeeping Account in an amount equal to the total amount by which the Employee's compensation from the Employer was deferred pursuant to such deferred compensation agreement.

2.2 Investment of Contributions

As a means of measuring the amount to be paid to each Employee as provided at Article III, the Employer will invest the amount of each Employee's contributions in mutual funds or other investments, as selected by the Employee from the investment choices provided by the Employer. The specific mutual funds or other investments available for investment and the selection of the sponsoring mutual fund company shall be determined by, and may from time to time be

changed by, the Employer in its sole discretion. The Employer shall also establish such administrative procedures as it deems necessary in connection with the Employee's direction of investments. All investments shall be held by the Employer in its own name or in the name of a "Rabbi" trust created for such purpose, and shall be invested pursuant to the direction of the Employee solely as a means of calculating the value of the Employee's Bookkeeping Account. All right, title and interest in and to all of the investments constituting the Bookkeeping Account shall belong to and be owned by the Employer and not by any Employee. Each Employee's sole right hereunder shall be to receive the payments to be made to him or her or to his or her Beneficiaries as provided for at Article III, and the claims of all payees hereunder, including each Employee, shall be as general unsecured creditors of the Employer. The Employer shall not be liable to any person whatsoever as to the result of any investment or investment arrangement made by it, and both the Employer and the Employee realize and understand that any investment may either increase or decrease in value at any time and from time to time.

ARTICLE III - BENEFITS

3.1 Retirement Benefits on Normal or Deferred Retirement

If an Employee retires on or after his or her Normal Retirement Date, the Employer shall distribute to such Employee one hundred percent (100%) of the amount of his or her Bookkeeping Account in accordance with Section 3.5, payments to commence not later than thirty (30) days after his or her actual retirement. No benefits under this Section 3.1 shall be payable to such Employee until the later of his or her Normal Retirement Date or Deferred Retirement.

3.2 Retirement Benefits on Disability Retirement

If an Employee retires by reason of his or her Disability Retirement, such Disability Retirement shall be assumed to have commenced on the first day of the month following the date such Employee's employment terminated as a result of such disability. In such case, the Employer shall distribute to such Employee one hundred percent (100%) of the amount of his or her Bookkeeping Account in accordance with Section 3.5, payments to commence not later than thirty (30) days following the date that such Employee's Disability Retirement commences.

3.3 Death Benefits

In the event of the death of an Employee prior to his or her Normal or Deferred Retirement, or his or her Disability Retirement, or Termination of Employment, his or her death benefit shall be an amount equal to one hundred percent (100%) of the value of his or her Bookkeeping Account, to be distributed in accordance with Section 3.5, payment to commence to those entitled to receive such payments under Section 3.6 within thirty (30) days following such Employee's death (unless payments are to be made to the Employee's estate, in which case payments shall commence within thirty (30) days following the Employer being notified of the appointment of a personal representative for the Employee's estate).

3.4 Termination of Employment; Forfeitures

(a) In the event of an Employee's Termination of Employment, such Employee shall be entitled to receive the following portions (that is, such Employee's Vested portion of his or her Bookkeeping Account) of his or her Bookkeeping Account.

(i) Unless such Employee is entitled to a larger percentage by reason of having attained an age stated below, if such Employee's Termination of Employment occurs within

three (3) years after such Employee first becomes a Plan Participant, zero percent (0%) of his or her Bookkeeping Account;

(ii) Unless such Employee is entitled to a larger percentage by reason of having attained an age stated below, if such Employee's Termination of Employment occurs on or after three (3) years after such Employee first becomes a Plan Participant the lesser of (A) thirty percent (30%) of such Employee's Bookkeeping Account or (B) thirty percent (30%) of the aggregate net contributions (net of withdrawals and forfeitures pursuant to Section 3.8) made by the Employer on behalf of such Employee pursuant to Section 2.1;

(iii) Fifty percent (50%) of his or her Bookkeeping Account if such Employee's Termination of Employment occurs when the Employee is sixty-two (62) years of age;

(iv) Seventy percent (70%) of his or her Bookkeeping Account if such Employee's Termination of Employment occurs when the Employee is sixty-three (63) years of age;

(v) Ninety percent (90%) of his or her Bookkeeping Account if such Employee's Termination of Employment occurs when the Employee is sixty-four (64) years of age;
and

(vi) One hundred percent (100%) of his or her Bookkeeping Account if such Employee's Termination of Employment occurs when the Employee is sixty-five (65) years of age or older.

(b) Payment of the amounts to which an Employee is entitled under this Section shall be made in accordance with Section 3.5, with payment commencing not later than thirty (30) days following his or her Termination of Employment.

(c) Any portion of an Employee's Bookkeeping Account that is not payable to an Employee by reason of the provisions of this Section 3.4 (that is, such Employee's Nonvested portion of his or her Bookkeeping Account) shall be forfeited and revert back to the Employer

(d) The Employer may, in its sole discretion, allow an Employee to receive more than the Vested portion of his or her Bookkeeping Account, to the extent determined by the Employer in its sole discretion.

3.5 Manner of Payment of Benefits

(a) Any benefit to be paid to an Employee in accordance with this Section 3.5 shall be paid in the following manner:

(i) On a quarterly basis, for twenty (20) consecutive quarters, each successive payment to be in an amount equal to such Employee's then Bookkeeping Account divided by the number of remaining quarterly payments; or

(ii) Any such more rapid manner of payment as the Employer and Employee (or his or her Beneficiary or Beneficiaries) may mutually agree.

3.6 Designation of Beneficiary

(a) The Employee may, from time to time, designate any person or persons (who may be designated contingently or successively and who may be an entity other than a natural person) as his or her Beneficiary or Beneficiaries to whom his or her Plan benefits are to be paid if he or she dies before receipt of all such benefits.

(b) Each Beneficiary designation shall be in the form prescribed by the Employer and will be effective only when filed with the Employer during the Employee's lifetime. Each Beneficiary designation filed with the Employer shall cancel all Beneficiary designations previously

filed. The revocation of a Beneficiary designation, no matter how effected, shall not require the consent of any designated Beneficiary.

(c) If the Employee fails to designate a Beneficiary in the manner provided above, or if the properly designated Beneficiary predeceases the Employee and there is no designated contingent Beneficiary, then the Employee shall be deemed to have designated his or her estate as his or her Beneficiary.

3.7 Unclaimed Payments

If an Employee or his or her Beneficiary fails to apprise the Employer of changes in any of their addresses, and the Employer is unable to communicate with such Employee or his or her Beneficiary at the address last recorded with the Employer, then the Employer, in its discretion, may either (a) direct that the Bookkeeping Account of the Employee be placed into a separate, interest-bearing savings account until claimed by the proper party, continuing to be subject to the claims of the creditors of the Employer, or (b) take any such other action as may be reasonable. If any such Bookkeeping Account remains unclaimed for five (5) years, the Employer may deem the same to be abandoned, in which case such account shall be forfeited and revert back to the Employer free from any claims by the Employee, his or her Beneficiaries or any of their successors in interest.

3.8 Withdrawal of Vested Amounts

(a) Unless an Employee has waived his or her right to do so prior to the Anniversary Date of each year, which waiver shall be by a written instrument in a form prescribed by the Employer and which will be effective only when filed with the Employer, an Employee, so long as he or she is employed by the Employer, shall have the right during any Plan Year beginning on such Anniversary Date to at any time withdraw up to one hundred percent (100%) of the then Vested

portion of his or her Bookkeeping Account, subject however to the forfeiture provision set forth below. An Employee, by a single waiver may waive his or her right of withdrawal for successive Plan Years.

(b) Notwithstanding anything to the contrary stated in this Plan, if an Employee at any time exercises his or her right of withdrawal as provided in this Section 3.8, an amount equal to fifteen percent (15%) of the amount to be withdrawn under Section 3.8 (a) shall be forfeited from such Employee's Bookkeeping Account and revert back to the Employer. Such forfeited amount shall be paid from the amount to be withdrawn before the payment of such withdrawn amount (net of the forfeited amount) to such Employee.

ARTICLE IV - MISCELLANEOUS

4.1 Non-guarantee of Employment

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or a limitation of the right of the Employer to discharge any Employee.

4.2 Non-alienation of Benefits

Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment (either at law or in equity), pledge, encumbrance, attachment, charge, garnishment, execution, or levy of any kind either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of an Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign,

pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The preceding limitation shall also apply to the creation, assignment or recognition of a right to any benefit payable with respect to an Employee pursuant to a domestic relations order.

4.3 Employee's Rights Unsecured.

The right of the Employee or his or her Beneficiaries to receive benefits hereunder shall be an unsecured claim against the general assets of the Employer, and neither the Employee nor his or her Beneficiaries shall have any rights in or against any investment connected with his or her Bookkeeping Account or any other specific assets of the Employer. All investments connected with any Bookkeeping Account shall constitute general assets of the Employer.

4.4 Expenses.

Costs of administration of this Plan will be paid by the Employer; provided, that in the discretion of the Employer any costs specifically attributable to an Employee's Bookkeeping Account may be assessed against that Employees' Bookkeeping Account.

4.5 Liability of the Employer.

The Employer shall not be liable for any loss to or diminution of any Employee's Bookkeeping Account or for anything done or omitted to be done by it unless arising from the Employer's willful misconduct or lack of good faith. The Employer's only liability shall be for its obligations agreed to herein.

4.6 Notice.

Any notice required by the provisions of this Agreement shall be in writing sent by registered or certified mail and if to the Employer, shall be addressed to its President or other duly authorized representative at the usual address of the Employer. Any notice from Employer to an

Employee or his or her Beneficiary shall be so sent to the then usual address of such person that is known to the Employer or to such other address as such person shall submit to the Employer in writing.

4.7 Gender and Number.

Wherever applicable, the use of any pronoun in this Agreement shall be deemed to include the masculine, feminine and neuter; the singular shall be deemed to include the plural and the plural shall be deemed to include the singular.

ARTICLE V - SUCCESSOR EMPLOYER

In the event of the dissolution, merger, consolidation or reorganization of the Employer or Change in Control, provision may be made by which the Plan will be continued by the successor; and, in that event, such successor shall be substituted for the Employer under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all powers, duties and responsibilities of the Employer under the Plan. In the event of a Change of Control and in the further event that the successor does not agree to assume the Plan liabilities, each Employee's Bookkeeping Account shall thereupon be, and become, one hundred percent (100%) Vested.

ARTICLE VI - APPLICABLE LAW

This Plan shall be construed, regulated, interpreted and administered under and in accordance with the laws of the State of New Jersey without giving effect to the principles of conflicts of law; except that in the case of conflict with federal law, federal law shall prevail.

ARTICLE VII - MODIFICATION, TERMINATION AND SEVERABILITY

7.1 If the Internal Revenue Service shall, at any time, interpret this deferred compensation Plan, under which contributions are made, to be ineffective with regard to deferral of any Employee's income, and that interpretation becomes final and unappealable, then those amounts (and only those amounts) in the Employee's Bookkeeping Account which would be treated as taxable income by the Internal Revenue Service shall be paid over to such Employee. All other assets remaining shall continue to be held (unless such amounts are de minimis) and shall be distributed in accordance with the provisions of this Plan.

7.2 Except as otherwise provided in this Agreement, this Plan may not be modified, revised, altered, added to or superseded, except by a written instrument signed by the parties hereto.

7.3 This Plan may be terminated by the Employer at any time within the Employer's sole discretion upon prior written notice to all Plan Participants, in which case no further contributions shall be made as otherwise provided for at Article II. In the event of such termination, each of the Employees shall continue to be entitled to receive the benefits provided for under Article III, which shall be paid in accordance therewith; or, if Employer so chooses in its sole discretion, the Employer may at any time after such termination pay any Employee or his or her Beneficiary the entire amount of such Employee's Bookkeeping Account (including both the Vested and Nonvested portions) in a single lump sum in complete discharge of all of the Employer's obligations to such Employee under this Plan.

7.4 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof; and any provision which is invalid or unenforceable because it is too broad, shall be interpreted to be only so broad as is valid and enforceable.

ARTICLE VIII - CLAIMS AND CLAIM REVIEW

Claims for benefits under this Plan may be filed with the Board. Written notice of the disposition of a claim shall be furnished to the claimant within 30 days after the claim is filed. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice.


Any claimant who has been denied a payment by a decision of the Board shall be entitled to request the Board to give further consideration to the claim by filing with the Board a request for a hearing. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Board no later than 60 days after receipt of the written notification by which the claim was denied. The Board shall then conduct a hearing within the next 60 days, at which the claimant may be represented by an attorney or any other representative of his or her choosing and at which the claimant shall have an opportunity to submit written and/or oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon 5 days written notice to the Board) the claimant or his or her representatives shall have an opportunity to review all documents in the possession of the Board which are pertinent to the claim at issue and its disallowance. Either the claimant or the Board may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made in writing by the Board and furnished to the claimant within 60 days of the hearing (unless there has been an extension of such 60 days due to special circumstances).

ARTICLE IX - EXECUTION

This Plan has been established by the Employer in accordance with resolutions adopted by its Board and may be executed in any number of counterparts, each of which shall be considered as the original and no requirement to produce another counterpart shall exist.

APOLLO DISTRIBUTING COMPANY

SEAL:

BY: 

Keith Slobodien, President

ATTEST:



Joanne Millar, Secretary

**UNANIMOUS CONSENT OF THE BOARD OF DIRECTORS
OF APOLLO DISTRIBUTING CO.**

The undersigned, being the sole member of the Board of Directors of the Corporation, hereby consents to the adoption of the following resolutions:

RESOLVED that the Corporation establish a Deferred Compensation Plan for the benefit of certain of its employees by adopting the Apollo Distributing Co. Non-Qualified Deferred Compensation Plan For the Benefit of Certain Employees in the form annexed hereto;

IT IS FURTHER RESOLVED that the President and the Secretary of the Corporation be and they are hereby authorized and directed to execute the said Plan, as well as Deferred Compensation Agreements and Split Dollar Insurance Agreements with each of Joanne Millar, Andre Bernard, and James Russomanno, all in the form annexed hereto;

IT IS FURTHER RESOLVED that the President and Secretary of the Corporation be and they are hereby authorized and directed to execute the Apollo Distributing Co. 1999 Irrevocable Trust Agreement in the form annexed hereto;

IT IS FURTHER RESOLVED that the Officers of the Corporation be and they are hereby authorized and directed to execute and deliver all such contracts, agreements, certificates, documents, and other instruments, and to do such other acts or things, as may be necessary or advisable, to give effect to the foregoing Resolutions and the matters provided for therein.



KEITH SLOBODIEN, Sole Director

DATED: July 1, 1999

STEIN, BLIABLIAS, MCGUIRE
EISENHOWER PL
354 EISENHOWER P
P.O. BOX 46
LIVINGSTON, NEW JER

TO:

Office of Employee Ben
Labor Management Ser
U.S. Department of Lab
Washington, DC 20216

Fold at line over top of envelope to
the right of the return address

CERTIFIED

Z 338 034 517

MAIL