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U.S. DISTRICT COURT E.D.N.Y.

★ JAN 13 2009 ★

LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JEFFREY FISHMAN,

Defendant.

08 Civ. No. 3509 (SJF)

**[PROPOSED] ORDER AUTHORIZING THE CREATION  
OF FAIR FUND, APPROVING DISTRIBUTION PLAN  
AND APPOINTING PLAN ADMINISTRATOR**

The Court, having reviewed the Motion by Plaintiff Securities and Exchange Commission to Create Fair Fund, Approve Distribution Plan and Appoint Plan Administrator, and for good cause shown, it is hereby:

**ORDERED** that the U.S. Securities and Exchange Commission ("Commission") is authorized to establish a Fair Fund in accordance with Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), 15 U.S.C. § 7246, so that the civil penalty imposed by the Court may be added to and become part of the disgorgement fund for the benefit of injured investors as defined in the Distribution Plan.

**IT IS FURTHER ORDERED** that the proposed Distribution Plan filed with this Court on January 12, 2009 is hereby approved.

**IT IS FURTHER ORDERED** that Ken C. Joseph, Esq. is appointed Plan Administrator.

**IT IS FURTHER ORDERED** that:

1. The Plan Administrator shall perform such functions as are necessary to implement and administer the approved Distribution Plan, pursuant to which monies in the Fair Fund, minus any appropriate expenses incurred in establishing, maintaining, and distributing the Fair Fund, including without limitation, administrative fees, taxes, or other costs, shall be distributed to injured investors as defined in the Distribution Plan.

2. The Plan Administrator shall be deemed to be acting within the scope of his employment with the Commission in administering this Distribution Plan. In carrying out his duties, the Plan Administrator may be assisted by other Commission staff acting under his supervision.

3. The Plan Administrator shall receive no compensation for the services performed in administering the Fair Fund, other than his regular salary as an employee of the Commission.

4. The Plan Administrator shall coordinate with the Court-appointed Tax Administrator, Damasco & Associates LLP, to ensure that the Fair Fund, a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, and related regulations pertaining to QSFs, 26 C.F.R. §§ 1.468B-1 through 5, complies with all related legal and regulatory requirements, including without limitation, satisfying any reporting or withholding requirements imposed on distributions from the Fair Fund.

5. The Plan Administrator may be removed *sua sponte* at any time by the Court or upon motion of the Commission and replaced with a successor.

