

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
SECURITIES AND EXCHANGE COMMISSION, :
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 :
 Plaintiff, : 10 Civ. 4868 (RJS)
 :
 v. :
 : ECF CASE
 :
 ADVANCED TECHNOLOGIES GROUP, LTD., :
 ALEXANDER STELMAK, and :
 ABELIS RASKAS, :
 :
 Defendants. :
----- X

**NOTICE OF PLAINTIFF'S MOTION
FOR AN ORDER AUTHORIZING CREATION OF A FAIR FUND,
APPROVING PLAN OF DISTRIBUTION AFTER NOTICE TO INVESTORS,
AND MODIFYING SCHEDULING ORDER**

PLEASE TAKE NOTICE, that upon the Declaration of Nancy A. Brown, executed March 15, 2011, and the Exhibit thereto, the Proposed Order and the Memorandum of Law in Support of the Commission's Motion, and the prior proceedings had herein, the Plaintiff Securities and Exchange Commission ("Commission"), will move this Court, at a date and time to be determined by the Court, before the Honorable Richard J. Sullivan, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, to enter an Order (1) authorizing the Commission to create a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a); (2) approving the Plan of Distribution proposed by the Commission, after notice to investors, submission of objections, if any, and a hearing; (3) modifying the Court's January 13, 2011 Scheduling Order; and (4) such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 15, 2011

Respectfully submitted,
SECURITIES AND EXCHANGE COMMISSION

By: _____
Nancy A. Brown

New York Regional Office
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Attorney for Plaintiff

By Electronic Mail to:

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Ariana Torchin, Esq. (Counsel for Defendants ATG and Alexander Stelmak)
Michael Fischman, Esq. (Counsel for Defendant Abelis Raskas)

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**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR AN ORDER AUTHORIZING CREATION OF A FAIR FUND,
APPROVING PLAN OF DISTRIBUTION AFTER NOTICE
TO INVESTORS, AND MODIFYING SCHEDULING ORDER**

SECURITIES AND EXCHANGE COMMISSION

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Attorneys for Plaintiff

March 15, 2011

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Plaintiff Securities and Exchange Commission (the "Commission") respectfully submits this Memorandum of Law in support of its motion for an Order (i) authorizing the Commission to create a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a); (ii) approving the Commission's Proposed Plan of Distribution (the "Proposed Plan") after notice to investors, submission of objections, if any, and a hearing; and (iii) modifying the Court's January 13, 2011 Scheduling Order to defer the circulation of the Proposed Plan to investors until June 27, 2011.

BACKGROUND

A. Procedural History, the Allegations of the Complaint and the Settlement

Plaintiff filed its complaint in this action on June 23, 2010. In its complaint, the Commission alleged that Defendants Advanced Technologies Group Ltd. (“ATG”), Alexander Stelmak and Abelis Raskas engaged in a series of unregistered offerings of securities of ATG and ATG’s predecessor entities, Oxford Global Network, Ltd (“Oxford Global”) and Luxury Lounge, Inc. (“Luxury Lounge”) (collectively, the “Offerings”). The Offerings, orchestrated by Stelmak between 1997 and 2006, were conducted in purported reliance on the registration exemptions under Rules 504 or 506 of Regulation D, promulgated under the Securities Act of 1933 (“Securities Act”). The Offerings did not qualify for these exemptions, however, because they were conducted by means of general solicitation – specifically, through nationwide cold-calling campaigns. (Complaint ¶ 1.)

Stelmak, who was the principal officer of Oxford Global and ATG, played a central role in all the Offerings. Salesmen supervised by Stelmak cold-called potential investors, and pitched investments in Oxford Global, Luxury Lounge and ATG as pre-IPO opportunities. (Complaint ¶ 1.) Raskas was Chief Executive Officer, Chairman of the Board and controlling shareholder of Luxury Lounge; in the Luxury Lounge offering, conducted in 2000-2001, he accepted investor subscriptions on Luxury Lounge’s behalf. (Complaint ¶ 1.) The total amount raised from investors in the Offerings was approximately \$14.7 million. (*Id.* ¶ 13.)

The Complaint alleged that the Defendants violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) & (c)], which prohibit the use of the mails or other interstate means to offer or sell unregistered securities absent an available exemption. (Complaint ¶ 1.)

Stelmak formed Oxford Global, a Delaware corporation, in 1997. In January 2001, the company, by then known as FX3000, Inc., participated in a reverse merger with a public Nevada shell corporation and became a reporting company under the Securities Exchange Act of 1934 (“Exchange Act”). At the same time, the company changed its name to ATG. In October 2001, ATG merged with Luxury Lounge, a company founded and controlled by Raskas and a purported on-line seller of luxury goods. (Complaint ¶ 6.)

At least until 2002, the company was focused on the development of FX3000, a currency trading software platform. Throughout this time period, investor capital obtained in the Offerings was the principal source of funding of ATG’s and its predecessor entities’ operations, enabling the development of the FX3000 trading platform. (Complaint ¶ 6.)

In March 2002, ATG and a United States subsidiary of a Swiss financial institution formed a joint venture called FX Direct Dealer, LLC (“FXDD”). ATG, which acquired a 25% equity stake in FXDD, contributed to the joint venture its FX3000 currency trading platform. In March 2009, ATG sold its equity stake in FXDD to FXDD for \$26 million, of which \$9 million was paid on the closing of the transaction, with the remaining \$17 million to be paid with interest in monthly installments over the following three years. (Complaint ¶ 7.)

In July 2009, ATG purchased the rights to a website called Moveldiot.com, which purports to be a relocation-assistance web service. According to ATG’s filings with the Commission, the website began its operations in January 2010 and has never generated any revenues. By the end of May 2010, ATG – which during this time period had limited operations, no revenues other than from investments, and only two employees – had spent approximately \$7.2 million of the buy-out proceeds, including approximately \$4 million in cash disbursements made to Stelmak, Raskas, and their spouses. (Complaint ¶ 8.)

None of the buy-out proceeds have been distributed to the Offering investors, whose money made it possible for ATG to remain in existence, develop the FX3000 platform and acquire its equity stake in FXDD. (Complaint ¶ 9.)

No public offering of Oxford Global, Luxury Lounge or ATG securities has occurred. ATG’s common stock was listed on the OTC Bulletin Board in or about 2006 and has since then been trading with minimal volume and at prices that have never reached \$2 per share and, since early 2007, have stayed under \$1 per share. (Complaint ¶ 19.)

Plaintiff’s action sought to disgorge all funds raised in the illegal Offerings, plus prejudgment interest thereon, civil penalties from Defendants ATG and Stelmak, and certain injunctive relief against Defendants ATG and Stelmak. On the basis of the allegations of its Complaint and the Declarations of Simona Suh, executed June 23, 2010 (with exhibits), and Christopher Ferrante, executed June 22, 2010 (with exhibits), Plaintiff sought an Asset Freeze and other Relief on June 23, 2010, to freeze the assets of the Defendants and to prohibit them from destroying, mutilating, concealing, altering or disposing of records of any kind. On June 23, 2010, the Court granted the Plaintiff’s application and entered the Commission’s proposed Order. (Order entered June 23, 2010.)

On November 16, 2010, ATG and Stelmak consented to a Final Judgment (the “ATG/Stelmak Judgment”) making them jointly and severally liable with each other for disgorgement of ill-gotten gains from the unregistered offerings of securities of ATG and Oxford Global, plus prejudgment interest thereon, and jointly and severally liable with each other and Raskas for disgorgement of proceeds of the unregistered offering of securities of Luxury Lounge plus prejudgment interest thereon, for a total of \$19,186,536.32. ATG and Stelmak also consented to an order to pay civil penalties of

\$65,000 and \$6,500 respectively, imposing certain injunctive relief, and to comply with the obligations imposed upon them by this Plan.

On November 17, 2010, Raskas consented to a Final Judgment (the "Raskas Judgment") making him jointly and severally liable with ATG and Stelmak for the portion of the \$19,186,536.32 disgorgement of ill-gotten gains related to the unregistered offering of securities of Luxury Lounge plus prejudgment interest thereon. (The ATG/Stelmak Judgment and the Raskas Judgment are referred to collectively as the "Judgments.") Defendant Raskas also consented to comply with the obligations imposed upon him by this Plan.

On January 13, 2011, the Court entered the ATG/Stelmak Judgment, directing ATG and Stelmak to pay the civil penalties to the Court Registry Investment System ("CRIS") on or before January 27, 2011 and imposing a payment plan requiring ATG or Stelmak to pay to the CRIS \$19,186,536.32 in disgorgement and interest, as follows:

- (1) \$14,835,000.00 on or before January 27, 2011;
- (2) \$528,371.38 on or before February 15, 2011;
- (3) \$519,315.07 on or before March 15, 2011;
- (4) \$520,350.07 on or before April 15, 2011;
- (5) \$514,916.28 on or before May 15, 2011;
- (6) \$512,328.77 on or before June 15, 2011;
- (7) \$507,153.73 on or before July 15, 2011;
- (8) \$504,307.46 on or before August 15, 2011;
- (9) \$500,296.80 on or before September 15, 2011; and
- (10) \$244,496.76 on or before October 15, 2011.¹

After the initial payment made in January 2011, the payments due from ATG and Stelmak have been and are expected to be will be funded primarily by the payments received by them from FXDD pursuant to the March 2009 buyout agreement.

Also on January 13, 2011, the Court entered the Raskas Judgment, imposing a payment plan to the extent that ATG and Stelmak fail to pay the \$4,749,948.03 disgorgement and interest for which all three Defendants are jointly and severally liable, as follows:

- (1) \$1,836,573.00 on or before January 27, 2011;
- (2) \$323,708.34 on or before February 17, 2011;
- (3) \$323,708.34 on or before March 17, 2011;
- (4) \$323,708.34 on or before April 17, 2011;
- (5) \$323,708.34 on or before May 17, 2011;
- (6) \$323,708.34 on or before June 17, 2011;
- (7) \$323,708.34 on or before July 17, 2011;
- (8) \$323,708.33 on or before August 17, 2011;
- (9) \$323,708.33 on or before September 17, 2011; and
- (10) \$323,708.33 on or before October 17, 2011.²

Taken together, the Judgments order that a total of \$19,258,036.32 in disgorgement, prejudgment interest and penalties be paid to the CRIS no later than October 17, 2011.

On February 7, 2011, this Court entered an Order appointing Damasco & Associates LLP, a certified public accounting firm located in Half Moon Bay, California, as tax administrator ("Tax Administrator") to execute all income tax reporting requirements, including the preparation and filing of tax returns, with respect to the funds under the Court's jurisdiction in this case.

B. The Cruz Action Against FXDD

On February 14, 2011, a class action was filed against FXDD in the United States District Court for the Southern District of New York, Cruz v. FX DirectDealer, LLC, 11 Civ. 1008 (PAC) ("Cruz Action"). Plaintiff Hugo Cruz brought fraud, civil RICO, and certain state and common law claims on his own behalf and on behalf of a putative class of others similarly situated. These claims are based on allegations of fraudulent and deceptive acts concerning FXDD's foreign currency trading platforms. The complaint alleges that ATG, along with numerous others, is a member of an "FXDD Fraud Enterprise," (Cruz Action Complaint ¶ 55) and details fraudulent acts allegedly committed by the enterprise,

¹ As Defendant ATG and Defendant Stelmak are jointly and severally liable with Defendant Raskas for the disgorgement and interest connected to the Luxury Lounge offering, the ATG/Stelmak Judgment orders that any individual payment installment amount owed by ATG and Stelmak will be reduced by any amount that Defendant Raskas pays.

² As Defendant ATG and Defendant Stelmak are jointly and severally liable with Defendant Raskas for the disgorgement and interest connected to the Luxury Lounge offerings, the Raskas Judgment orders that each individual payment installment amount owed by Raskas will be excused provided that Defendants ATG and Stelmak pay the full amount owed by them in each individual payment installment pursuant to the ATG/Stelmak Judgment.

including some that occurred while ATG was still a member of the joint venture that programmed, marketed and operated the allegedly fraudulent trading platform. (*Id.* at ¶¶ 58, 70, 75(b)(i), (ii), (iii), (iv), (v), (vi), (vii), (viii), and (ix).)

None of the Defendants in the Commission's case has been named a defendant in the Cruz Action and Defendants have advised the Commission that they expect that the Cruz Action will have no impact on FXDD's willingness or ability to pay the amounts still due to ATG under the March 2009 buy-out agreement and which are the primary source of funding of the remaining amounts due from Defendants under the Judgments. (Declaration of Nancy A. Brown, executed March 15, 2011 ("Brown Decl.") ¶ 5.)

THE PROPOSED PLAN OF DISTRIBUTION

The Commission's Proposed Plan is designed to distribute the amounts Defendants are to pay under the Judgments as a Fair Fund to ATG investors. The Proposed Plan aims to return to them as much of their principal investment as possible, given the disgorgement, prejudgment interest and penalty payments received from Defendants, as well as a measure of interest for the period of investment.

The Commission believes that it is appropriate and in the best interests of the investors to make a distribution of the Fair Fund on a *pro rata* basis as set out in the accompanying Proposed Plan.

A. Creation of a Fair Fund

The Commission seeks to create a Fair Fund under the Sarbanes-Oxley Act with the disgorgement, prejudgment interest and penalty amounts paid by Defendants under the terms of the Judgments. If authorized, the creation of a Fair Fund will allow the Commission to contribute the \$71,500 received in penalties from ATG and Stelmak to the sums available for distribution to investors, rather than paying those amounts to the Treasury.

B. The Proposed Plan

The Proposed Plan (submitted herewith as Brown Decl., Ex. A) provides for the distribution of the Fair Fund to all eligible ATG investors in all of the Offerings, as described in the Complaint and the Proposed Plan, who consent to the cancellation of their ATG holdings. The Proposed Plan contemplates that all of the Fair Fund will be distributed to ATG investors, and that the costs of the administration of the distribution up to \$500,000, including the costs of retaining the Fund Administrator³, will be paid out of the Administration Costs account funded, pursuant to the Stipulation and Order entered January 24, 2011, by a contribution of \$500,000 from Defendant ATG.⁴ The Proposed Plan provides for a *pro rata* General Distribution to the Eligible Claimants in proportion to the amount each Eligible Claimant invested, plus some measure of interest, not to exceed the IRS underpayment rate minus three per cent, for the duration of the Eligible Claimant's investment (as calculated in the Proposed Plan).⁵ The Proposed Plan also seeks to make a *pro rata* distribution to those ATG investors who sold their shares prior to December 31, 2010 at a loss. No distributions will be made to claimants whose loss was less than the De Minimis amount of \$25. Any Eligible Claimant who negotiates a Distribution Check will be deemed to have consented to ATG's cancellation of his, her or its ATG shares.

The Proposed Plan also provides for the possibility of a Supplemental Distribution if sufficient monies remain in the Fair Fund after the General Distribution, either because some investors are not located after diligent efforts, or Distribution Checks are not negotiated by the Stale Date, or certain investors decline to negotiate their Distribution Checks, choosing instead to remain as ATG investors, or some combination of the foregoing.

C. Modification of the Scheduling Order

As described more fully below, the Commission also seeks modification of the Court's January 13, 2011 Scheduling Order. Recent developments make the full, timely funding of the Judgments less certain, and an early dissemination of the Proposed Plan to investors will create expectations of recovery that may not be possible to fulfill, may create investor confusion, and may necessitate an amendment to the Proposed Plan to adjust the claim computation methodology or pay-out schedule contained in the Proposed Plan should the Fair Fund be reduced. For the reasons detailed below, the Commission proposes that the Court delay the circulation of the Proposed Plan to investors until after the June payment under the Judgments is made. No delay to the distribution of the Fair Fund should result from deferral of the Notice Date to June 27, 2011. Defendants' counsel have consented to this modification of the Scheduling Order. (Brown Decl. ¶ 6.)

ARGUMENT

A. The Court Should Authorize the Creation of a Fair Fund

³ The Commission intends to move to propose a Fund Administrator for the Court's approval as soon as practicable.

⁴ Pursuant to the agreement between the Commission and ATG, amounts earned as interest on the Fair Fund will also be paid toward the costs of administration.

⁵ The Commission's Proposed Plan was drafted using certain assumptions about investor composition that may prove untrue once it receives and processes appropriate records from ATG's transfer agent of purchases and sales during the period covered by the Proposed Plan. The Commission expects that ATG's transfer agent will provide those records shortly, and well before the date proposed by the Commission for circulation of the Proposed Plan.

The Sarbanes-Oxley Act allows the Commission to seek a court order that adds the penalty payments of ATG and Stelmak to the amounts to be distributed to investors through the creation of a Fair Fund. 15 U.S.C. § 7246(a).⁶ The Fair Fund will allow the Commission to distribute the penalties to injured investors instead of paying them to the United States Treasury.⁷ Distributing penalties to investors comports with the Congressional intent embodied in Section 308(a) of the Sarbanes-Oxley Act. Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC, 467 F.3d 73, 82 (2d Cir. 2006). Accordingly, the Commission requests that the Court authorize the Commission to create a Fair Fund consisting of all disgorgement, prejudgment interest and penalties paid and to be paid by Defendants for distribution to ATG investors.

B. The Court Should Approve the Proposed Plan

After notice of the Proposed Plan and the Commission's motion for approval is sent to investors, and after investors have an opportunity to object, the Court should approve the Commission's Proposed Plan.

District Courts have broad authority to approve plans of distribution proposed by the SEC in enforcement cases. SEC v. Wang, 944 F.2d 80, 85 (2d Cir. 1991).⁸ In reviewing proposed plans, the Second Circuit instructs that courts should defer to the "experience and expertise" of the Commission in determining how to distribute the funds. WorldCom, 467 F.3d at 82. The Court acts within its discretion, therefore, where it determines that the plan proposed by the Commission is "fair and reasonable." Id. (citing Wang, 944 F.2d at 85 ("once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end."))

Here, the Commission's Proposed Plan is both fair and reasonable because it attempts to return to all ATG investors their principal investment and some measure of interest. A distribution of funds to the Eligible Claimants should be neither difficult nor costly because existing ATG's corporate records indicate that the total number of investors should not exceed 500.⁹ Because the cost of identifying the Eligible Claimants, determining how much the Eligible Claimants lost, and distributing the recovered funds on a *pro rata* basis is justifiable, given the amount the Eligible Claimants stand to receive, it is appropriate to distribute the funds to the Eligible Claimants pursuant to the Proposed Plan.

C. The Court Should Modify the January 13, 2011 Scheduling Order

The Commission proposes that the Court defer the date by which the Commission must circulate the Proposed Plan to investors until after all of the ATG payments through and including June 15, 2011 have been fully paid pursuant to the Judgments (including, if not excused, a payment from Raskas on June 17, 2011). Until that date, there is increased uncertainty of the amounts that will be in the Fair Fund, and circulation of the Proposed Plan prior to having this certainty will create investor expectations that may not be met, may create unnecessary confusion and objections to the Proposed Plan or to claims, and may necessitate the additional expense associated with a Plan amendment. Scheduling the circulation of the Proposed Plan to investors after the scheduled June payments would avoid these potential problems, because by that date either the amounts of the Fair Fund will be certain, as the remaining amounts due under the Judgment can be satisfied by assets held by the Defendants and frozen by the Court's Order entered January 24, 2011, or the Commission will have had the opportunity to submit a revised Proposed Plan in response to an earlier default.

As described above, since the Court entered its Order setting the Schedule for submission and approval of the Proposed Plan, the Cruz Action against FXDD was filed. The Cruz Action may have some effect on FXDD's willingness or ability to pay the amounts under the buy-out agreement with ATG. Those amounts are the primary source of ATG's payments, through June, under the Judgments. If, by reason of an FXDD default prior to the June 2011 payments, the Defendants are not able to satisfy the full amounts due under the Judgments in a timely manner, this may require the Commission to move the Court to amend the Proposed Plan to permit a reduction in the Fair Fund, efforts to locate other sources for payment, an adjustment to the allocation methodology, or a revised timeline for distribution. If investors have

⁶ Section 308(a) of the Sarbanes-Oxley Act, 15 U.S.C. § 7246(a), provides:

If in any judicial or administrative action brought by the Commission under the securities laws ... the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

⁷ Prior to the Sarbanes-Oxley Act, all civil penalties were required to be paid to the United States Treasury under Section 21(d)(3)(C) of the Exchange Act. See 15 U.S.C. § 78u(d)(3)(C).

⁸ Although a distribution of disgorged funds is not required by statute, where practicable, disgorged money is often distributed to victims of the violation in accordance with a plan proposed by the Commission and approved by the court. Where feasible and appropriate to effect such a distribution, the Commission has been vested with broad discretion in fashioning distribution plans for funds like the Proposed Plan in this case. See id.

⁹ As noted above, ATG's transfer agent has not yet made its records available to the Commission, and the Commission's Proposed Plan has been formulated by reference only to existing ATG records.

already received and reviewed the current Proposed Plan, these potentially significant amendments could create confusion and objection when smaller payouts are made or the payout schedule is extended, contrary to expectation.

However, after the June 2011 payment dates, if the prior payments have been made, Defendants' frozen assets can be used to satisfy any shortfall occasioned by an FXDD default under the Judgments, and the distribution methodology, amounts and timing can be fixed as indicated in the Proposed Plan. If there has already been a default prior to this date, the Commission will then have an opportunity to substitute an amended Proposed Plan appropriate to the changed circumstances, without the confusion and expense of a pre-existing but superseded plan, and without a significant risk of creating unrealizable expectations.

For these reasons, the Commission respectfully requests that the Court modify its Scheduling Order to postpone the circulation of the Proposed Plan to investors until June 27, 2011, or ten days following the Defendants' obligations to make the payment due under the Judgments on June 15, 2011 and June 17, 2011.¹⁰

Delay in circulating the Proposed Plan should work no delay in the distribution schedule since no distribution can occur until the final payment is made on October 17, 2011. Objections to the Proposed Plan would be due under the proposed Scheduling Order by July 27, 2011, and responses to them would be due thirty days thereafter, or August 27, 2011. If the Court's schedule permits, a hearing could be held, and a final plan approved prior to the final payment due under the Judgments.

CONCLUSION

For all the foregoing reasons, the Commission respectfully requests that the Court grant its Motion for an Order (i) authorizing the Commission to create a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002; (ii) approving, after notice to investors and an opportunity for them to object, the Commission's Proposed Plan; and (iii) modifying the Court's January 13, 2011 Scheduling Order.

Dated: New York, New York
March 15, 2011

SECURITIES AND EXCHANGE COMMISSION

By: _____
Nancy A. Brown
Margaret D. Spillane
3 World Financial Center
New York, New York 10281-1022
(212) 336-1023
Attorney for Plaintiff

¹⁰ The Commission respectfully requests that the Court allow it 30 days to respond to Objections that may be received by the Court. Under the January 13, 2011 Order, the Commission's responses are due on the same day as Objections.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Defendants.	:	
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DECLARATION OF NANCY A. BROWN
IN SUPPORT OF THE COMMISSION'S MOTION
FOR AN ORDER AUTHORIZING THE CREATION OF A FAIR FUND,
APPROVING PLAN OF DISTRIBUTION AFTER NOTICE TO INVESTORS,
AND MODIFYING SCHEDULING ORDER

I, Nancy A. Brown, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the bar of the State of New York and of this Court. I am employed by Plaintiff Securities and Exchange Commission (the "Commission") in the Commission's New York Regional Office as Senior Trial Counsel. I make this declaration in support of the Commission's Motion for an Order (i) authorizing the Commission to create a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a); (ii) approving the Commission's Proposed Plan of Distribution (the "Proposed Plan") after notice to investors, submission of objections, if any, and a hearing; and (iii) modifying the Court's January 13, 2011 Scheduling Order to reschedule the date for circulation of the Proposed Plan to investors to June 27, 2011.

2. Appended hereto as Exhibit A is the Commission's Proposed Plan.

3. As alleged in the Complaint in this action, in March 2009, Defendant Advanced Technologies Group, Ltd. ("ATG") agreed with its former joint venture partner, FX DirectDealer, LLC ("FXDD"), to a buy-out of ATG's 25% interest in FXDD for \$26 million. (Complaint ¶ 7.) Pursuant to that agreement, FXDD is to make payments on the amounts still due through 2012 on an installment basis. (Id. ¶ 7.) Those payments are the primary source of Defendants' payments under the Judgments entered against them in this action on January 13, 2011, until after the payments through and including the Judgments' June payment are made.

4. On February 14, 2011, a class action was filed against FXDD, Cruz v. FX DirectDealer, LLC, 11 Civ. 1008 (PAC) (S.D.N.Y.), which charges FXDD, inter alia, with various fraudulent acts and naming individuals and entities, including ATG, as members of a RICO fraudulent enterprise. Neither ATG nor Defendant Alexander Stelmak ("Stelmak") nor Defendant Raskas ("Raskas") is named as a defendant in the Cruz action.

5. Counsel for ATG, Stelmak and Raskas have advised the Commission staff that they expect that the Cruz action will have no impact on FXDD's willingness or ability to pay the amounts still due to ATG under the March 2009 agreement.

6. Counsel for ATG, Stelmak and Raskas have advised that they consent to the Commission's motion to modify the Court's January 13, 2011, Scheduling Order to defer circulation of the Proposed Plan to June 27, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 15, 2011
New York, New York

Nancy A. Brown