

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRIDGE PREMIUM FINANCE, LLC (f/k/a
BERJAC OF COLORADO, LLC),
MICHAEL J. TURNOCK, and
WILLIAM P. SULLIVAN, II,

Defendants,

and

JANE K. TURNOCK,

Relief Defendant.

Civil Action No.
1:12-cv-02131

MOTION FOR ORDER APPROVING DISTRIBUTION PLAN

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”), respectfully moves the Court for an order approving the Commission’s proposed plan to distribute approximately \$546,298, less any reserve for taxes, fees or other expenses of administering the plan, to injured investors who invested in the alleged Ponzi scheme of Bridge Premium Finance, LLC (“BPF”), Michael J. Turnock (“Turnock”), and William P. Sullivan, II (“Sullivan”) (collectively, “Defendants”) from at least 2002.

I. BACKGROUND

On September 19, 2012 the Commission filed an Amended Complaint (Dkt. #15),

alleging *inter alia*, that Defendants raised at least \$15.7 million from more than 120 investors in multiple states through an unregistered offering of promissory notes from approximately 1996 through 2012.

Defendants portrayed the investments in promissory notes as safe, conservative investments comparable to money market accounts and certificates of deposit, but offering higher rates of interest, up to 12% annually. BPF purportedly earned enough interest on its premium financing loans to its clients in order to pay the rates of interest it promised to its promissory note investors. In reality, from at least 2002, BPF operated a Ponzi scheme. Since that time, BPF did not earn sufficient returns from its insurance premium financing business from which to pay interest and redemptions to investors. Instead, BPF paid quarterly interest payments and redemptions to existing investors with money raised from other investors. After more than a decade of Ponzi payments and operational losses, by May 2012, BPF owed investors more than \$6.2 million, yet its insurance premium loan portfolio totaled less than \$250,000, and it had total assets of less than \$500,000.

On March 11, 2013, the Commission obtained a final judgment as to BPF (Dkt. #64) and Turnock (Dkt. #65). The Court ordered that BPF was liable for disgorgement of \$6,289,306, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$15,723, jointly and severally with Turnock. BPF and Turnock were each also liable for a civil penalty in the amount of \$6,289,306.

On April 24, 2015, the Commission obtained an amended final judgment against Sullivan (Dkt. #106). Sullivan was held liable for disgorgement of \$70,912.31, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$5,122.27, and a civil penalty in the amount of \$150,000.

The SEC has received disgorgement of \$546,298 (disgorgement of Jane Turnock of

\$361,372, disgorgement of Bridge Premium Finance and Michael Turnock of \$184,925) and post-judgment interest of \$4,690 from Bridge Premium Finance and Michael Turnock. The post-judgment interest is to be sent to the United States Treasury and is not available for distribution. Prior to deducting taxes, fees, and expenses of the tax administrator and fees and expenses of the distribution agent, there is approximately \$546,298, prior to any reserve for taxes, fees or other expenses of administering the plan, available for distribution. The staff may receive some additional money, but it is unlikely to exceed \$100,000.

On August 22, 2014 the Court appointed Damasco & Associates LLP as the tax administrator (“Tax Administrator”) to execute all the tax reporting and filing requirements for the distribution fund (Dkt. #97).

On April 24, 2015, the Commission obtained an amended final judgment against Sullivan (Dkt. #106). Sullivan was held liable for disgorgement of \$70,912.31, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$5,122.27, and a civil penalty in the amount of \$150,000.

On May 7, 2015, the Court appointed Gilardi & Co. LLC (“Gilardi”) as Distribution Agent (“Distribution Agent”), to assist in overseeing the administration and distribution of the distribution fund in coordination with Commission staff, pursuant to the terms of the Distribution Plan (“Distribution Plan”) (Dkt. #110). The Commission now respectfully moves the Court for an order approving the proposed Distribution Plan.

ARGUMENT

a. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement

action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See, e.g., SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989).

The Court's review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) (“[u]nless the consent decree specifically provides otherwise[,] 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”), citing *Wang*, 944 F.2d at 85.¹

For the reasons articulated below, the Commission submits that the proposed Distribution Plan constitutes a fair and reasonable allocation of the funds available for distribution and should be approved.

b. The Commission's Proposed Distribution Plan Provides a Fair and Reasonable Allocation

The Commission's goal in fashioning a Distribution Plan is to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the economic harm that investors in BPF suffered as a result of Defendants' actions. The Commission's complaint alleged that Defendants perpetrated a Ponzi scheme by raising money from promissory notes to provide capital for BPF's insurance premium financing business.

¹ Courts have historically deferred to the Commission's decisions regarding whether and how to distribute disgorgement and prejudgment interest. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). Courts have also held that the decision of whether and how to distribute penalty money is soundly within the Commission's discretion. *Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 72, 84 (2d Cir. 2006).

Accordingly, the proposed Distribution Plan would equitably distribute the Distribution Fund to investors who purchased promissory notes from BPF from at least 2002. Payments to eligible investors of BPF will be calculated on a *pro rata* basis based on the initial deposit plus other deposits minus withdrawals minus interest paid in cash. If this calculation results in a positive number, that number is considered harm (“Harm”) suffered by the investor. If the calculation results in zero or a negative number, the Harm is considered to be zero. The total Harm will be calculated by adding up all the Harm suffered by the eligible investors. An investor’s *pro rata* share will be calculated by dividing each investor’s Harm by the total Harm. An investor’s *pro rata* share of the Distribution Fund will be calculated by multiplying the investor’s *pro rata* share by the total amount of funds available for distribution.

WHEREFORE, the Commission respectfully requests that the Court enter an order:

- (1) approving the Commission’s proposed Distribution Plan to distribute approximately \$546,298, less any reserve for taxes, fees or other expenses of administering the plan, to injured investors who purchased promissory notes of BPF from at least 2002; and
- (2) establishing notice procedures as proposed in the SEC’s proposed Distribution Plan.

Dated: February 8, 2016

Respectfully submitted,

/s/ Michael S. Lim
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