

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 14-cv-23336-MORENO/O'SULLIVAN

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ABATEMENT CORP. HOLDING COMPANY LIMITED,

Defendant, and

BRENDA M. DAVIS
INTERNATIONAL BALANCED FUND,

Relief Defendants.

**MOTION FOR ORDER TO PAY FEES AND EXPENSES OF DISTRIBUTION AGENT
AND APPROVE PROPOSED DISTRIBUTION PLAN**

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) in coordination with the appointed Distribution Agent, Kurtzman Carson Consultants LLC (“KCC” or “Distribution Agent”), respectfully moves the Court to enter an Order: (1) authorizing the SEC to review, approve and pay all future fees and expenses of the Distribution Agent; and (2) approving the Commission’s proposed plan to distribute the Distribution Fund to injured investors (“Distribution Plan”);

I. BACKGROUND

On September 10, 2014, the Commission filed its Complaint against Defendant Abatement Corp. Holding Company Limited (“Abatement”), and Relief Defendants Brenda M. Davis (“Davis”) and International Balanced Fund (“IBF”). The Complaint alleged that Abatement,

through its former principal, Joseph Laurer (who died prior to the filing of this action), operated a Ponzi scheme, in which approximately fifty (50) investors invested over \$4.6 million in IBF and another fund controlled by Abatement. The Complaint alleged, inter alia, that Laurer and Abatement violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and 17 C.F.R. § 240.10b-5. The Complaint also alleged that Laurer misappropriated more than \$1.2 million of investor funds to funnel money and property to Davis, his wife.

On September 12, 2014, the Court granted the SEC's emergency motion for an asset freeze, freezing assets of Abatement held domestically and also offshore at the Turks and Caicos Banking Company Limited ("TCBC"), the assets of IBF at Bank of America and Davis' assets; and ordering, inter alia, the repatriation of assets held outside the United States. The freeze was extended for Abatement and IBF on September 22, 2014. The freeze was extended for Davis on October 22, 2014, November 24, 2014 and January 27, 2015.

Final Judgment was entered against Abatement and IBF on October 29, 2014. Abatement was ordered to pay a total of \$3,761,736.15 and IBF to pay a total of \$1,137,852.62 in disgorgement and prejudgment interest. Final Judgment was entered March 31, 2015 against Davis for disgorgement and prejudgment interest of \$525,000.

Following entry of judgment against Abatement and IBF, the staff coordinated the turnover of the frozen funds totaling \$103,172 held domestically in IBF's account at Bank of America and Abatement's account at RJO'Brien, a futures brokerage to the SEC. The staff also had secured the turnover of Davis' frozen funds in the full amount of \$525,000.

The SEC engaged local counsel in Turks and Caicos to initiate proceedings to domesticate the judgment against Abatement and liquidate the frozen assets held there. KCC

was engaged to act as receiver for the Abatement assets and help implement the liquidation of the frozen assets held at TCBC. On about July 15, 2015, \$821,777.09 was repatriated to the U.S.

In total, the SEC has collected \$1,449,949.55 and is holding these funds in an interest-bearing account at the U.S. Treasury. This sum plus any interest earned, minus taxes, fees and administrative expenses paid constitute the amount available for distribution to harmed investors (the "Distribution Fund").¹

On May 20, 2015, the Court appointed KCC as the Distribution Agent, to assist in overseeing the administration and distribution of the Distribution Fund in coordination with Commission staff pursuant to the terms of a distribution plan to be submitted for court approval.

On July 28, 2015, 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.

II. PAYMENT OF DISTRIBUTION AGENTS FEES AND EXPENSES

Before recommending KCC's appointment as Distribution Agent, the SEC accepted KCC's proposal to provide administration services for approximately \$52,000. In the interests of paying the administration fees timely, distributing funds expeditiously and conserving resources of both the Court and the SEC, the Commission now requests authorization for its staff to review, approve and pay all future fees and expenses of the Distribution Agent from the Distribution Fund, without further application or order from the Court. All such payments of fees and expenses will be tracked and reported to the Court in a final accounting.

¹ The Commission staff does not anticipate receiving any material additional funds in this matter; however, a potential dividend payment may be received and added to the Distribution Fund.

III. APPROVAL OF PROPOSED DISTRIBUTION PLAN

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 injured investors 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 Fair Fund 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”)² citing *Wang*, 944 F.2d at 85.

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 will allocate the available funds fairly and reasonably, in a manner proportional to the economic harm that investors in the Ponzi scheme suffered as a result of Defendants' actions.

² Courts have historically deferred to the Commission's decision regarding whether and how to distribute disgorgement and prejudgment interest. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). With respect to the distribution of civil penalties, courts have 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).

The Commission's complaint alleged that Defendants operated a Ponzi scheme that enticed investors to invest over \$4.6 million in IBF and another fund controlled by Abatement. The Complaint alleged, that the Defendants violated Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and 17 C.F.R. § 240.10b-5. The Complaint also alleged that Laurer misappropriated more than \$1.2 million of investor funds to funnel money and property to his wife. The Ponzi scheme resulted in most investors losing their entire investment and the total investment losses are approximately \$3.5 million (\$3,571,075.81), but the Commission has only recovered \$1,449,949.55.

Accordingly, the proposed Distribution Plan will equitably distribute the Distribution Fund proportionally to investors who invested in the Ponzi scheme and incurred loss. Payments to injured investors will be calculated on a *pro rata* basis. This will be based on the total amount invested by the investor as a percentage of the total amount invested by all investors as described in the proposed Distribution Plan.

WHEREFORE, the Commission respectfully requests that the Court enter an order authorizing the SEC to review, approve and pay all future fees and expenses of the Distribution Agent and approving the proposed Distribution Plan as set forth below, including the proposed timeline attached thereto as Exhibit A.

Dated: April , 2016

Respectfully submitted,

____s/ Nancy Chase Burton_____
Nancy Chase Burton
Attorney for Plaintiff
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5876
Telephone: (202) 551-4425
Facsimile: (202) 772-9363
Email: burtonn@sec.gov