

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Case No. 1:09-CV-6533 (NRB)

AL-RAYA INVESTMENT COMPANY

ECF Case

and

WALEED KHALID AL-BRAIKAN
As Representative of the Heirs of HAZEM
KHALID AL-BRAIKAN,

Defendants,

KIPCO ASSET MANAGEMENT
COMPANY (KAMCO),

Relief Defendant.

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
NOTICE OF MOTION, MOTION AND MEMORANDUM IN SUPPORT
OF ORDER FOR DISTRIBUTION OF FAIR FUND

NOTICE

PLEASE TAKE NOTICE, that based upon the accompanying Affidavit of Andrew G. Beckord (“Affidavit”) in Support of the Securities and Exchange Commission’s (“Commission”) Motion for Distribution of Fair Fund executed on July 28, 2015, the Proposed Order submitted herewith, and all prior proceedings had herein, and pursuant to the Plan of Distribution approved

by this Court on December 16, 2013 and as amended by this Court on February 9, 2015 (“Distribution Plan”), Plaintiff Securities and Exchange Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Naomi Reice Buchwald, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an order:

1. Directing the Clerk of the Court to issue a check to the Distribution Agent, Analytics Consulting, LLC, from the Court Registry Investment System (“CRIS”) account number 09-cv-6533, under the case name designation “SEC v. Al Raya Investment Company, et al.” for all of the funds in the CRIS accounts representing the Harman International/Textron Fair Fund (“Fair Fund” or “Fund”), minus court registry fees, totaling approximately \$6,505,321.92; and

2. Directing the Distribution Agent to:

- a. Deposit these funds pursuant to Paragraph 64 of the Distribution Plan; and
- b. Distribute these funds to Eligible Claimants in accordance with the terms of the Distribution Plan.

MOTION

In accordance with the Distribution Plan approved by this Court on December 16, 2013 and as amended by this Court on February 9, 2015, Commission (“Commission”) respectfully requests that the Court enter an Order: 1) Directing the Clerk of the Court to issue a check to the Distribution Agent, Analytics Consulting, LLC (hereafter “Distribution Agent” or “Analytics”) from the CRIS account number 09-CV-6533, under the case name designation “SEC v. Al Raya Investment Company, et al.” for all of the funds in the CRIS accounts representing the Fair Fund, totaling approximately \$6,505,321.92, minus Court registry fees; and

2. Directing the Distribution Agent to:

- a. Deposit these funds pursuant to Paragraph 64 of the Distribution Plan; and
- b. Distribute these funds to Eligible Claimants pursuant to the final payee list in accordance with the terms of the Distribution Plan.

MEMORANDUM

Procedural Background

On July 23, 2009, the Commission first filed an action alleging that Hazem Al-Braikan (“Al-Braikan”), a Kuwaiti financial advisor and resident of Kuwait, profited from the sale of large positions in the securities of Textron and Harman he had purchased shortly before he disseminated false acquisition offers. Al-Braikan sold those positions at prices inflated by the false information. Defendant Al-Raya Investment Company (“Al-Raya”), a company directed by Al-Braikan, also profited from trading in Harman. Other individual investors profited when they traded in both Textron and Harman securities at Al-Braikan’s suggestion or when Al-Braikan traded on their behalf. Much of the trading was done through individual client brokerage accounts at Relief Defendant KIPCO Asset Management Company (“KAMCO”), over which Al-Braikan had trading authority.

On July 26, 2009, Al-Braikan died, and on October 30, 2009, the court ordered Waleed Khalid Al-Braikan, as Representative of the Heirs of Hazem Khalid Al-Braikan (the “Estate”), to be substituted as a party in Al-Braikan’s place. An Amended Complaint was filed on August 4, 2010, naming the Estate as a Defendant and naming KAMCO as Relief Defendant, alleging that KAMCO clients were unjustly enriched and that the profits held by KAMCO should be disgorged.

By separate orders dated August 9, 2010, the Court entered Final Judgments as to Defendants Al-Raya and the Estate, and Relief Defendant KAMCO. All three Defendants were

ordered to disgorge profits and a civil penalty was entered against Defendant Al-Raya. An amended Final Judgment as to the Estate was entered on August 31, 2010. On or about August 12, 2010, Defendant Al-Raya paid \$1,509,707.59 into an interest bearing account with the CRIS; on August 17, 2010, Relief Defendant KAMCO paid \$2,439,199.87 into the CRIS account; and on October 27, 2010, the Estate paid \$2,579,821.15 into the CRIS account. As of July 27, 2015, the balances of the accounts totaled approximately \$6,505,321.92.

On October 12, 2012, the Court appointed Damasco & Associates LLP as Tax Administrator for the Distribution Fund. On May 6, 2013, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C. §7246(a)], the Court created a Fair Fund. The Fair Fund is comprised of the amounts contained in the CRIS accounts, plus interest and income thereon, minus court registry expenses and taxes and other fees and expenses of the Fund. The same order appointed BMC Group, later renamed Analytics Consulting LLC (“Analytics”), as distribution agent for the Fair Fund.¹ Analytics, in consultation with Commission staff, prepared a Distribution Plan for the Harman International/Textron Fair Fund. On December 16, 2013, the Distribution Plan was approved by this Court. On February 6, 2015, the Court approved an Amended Plan of Distribution for the Harman International/Textron Fair Fund.

Approximately 25,850 Distribution Plan Notice Packets have been mailed to potential claimants identified on information from the Commission staff and/or from brokers and other nominees who purchased and/or held securities on investors’ behalf. Analytics also requested that notice of the distribution be included on the Depository Trust Company (“DTC”) Legal Notice System (“LENS”), which offers access to a comprehensive online library of notices

¹ Due to a reorganization at BMC Group, by Order dated December 3, 2013, the Court appointed Analytics (formerly “Analytics Inc., d/b/a BMC Group Class Action Services), to replace BMC Group as Distribution Agent overseeing the administration and distribution of the Fair Fund in coordination with Commission staff.

concerning DTC-eligible securities. Analytics also posted copies of the Distribution Plan, Proof of Claim Form and Distribution Plan Notice on the case-specific webpage maintained by the Distribution Agent and established a toll-free number to accommodate potential claimant inquiries.

Disbursement of Fair Fund

Pursuant to the Distribution Plan, as amended, the Distribution Agent has prepared and submitted to the Commission staff a list of Eligible Claimants, the amount of the asserted claim of each Eligible Claimant, and the Approved Claim for each Eligible Claimant (the “Final Payee List”).² Each Eligible Claimant will receive a *pro rata* share of the Harman International/Textron Fair Fund available for distribution based upon the Eligible Loss Amount. The Distribution Agent has also submitted his Affidavit³ in support of this Motion, which provides a detailed explanation of the procedures the Distribution Agent used to develop the Final Payee List. The Final Payee List and the Affidavit has been reviewed by the undersigned Commission Counsel who has no objections.

² The Final Payee List shall, upon request, be made available to the Court under seal.

³ Andrew G. Beckord is the Project Manager for Analytics.

WHEREFORE, for all the foregoing reasons, the Commission respectfully requests that this Court enter the proposed Order and grant such other relief as it deems just and proper.

Dated: July 28th, 2015

Respectfully submitted,

/s/ Susan S. Pecaro
Susan S. Pecaro
Nichola L. Timmons
Attorneys for Plaintiff
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5631
Tel: (202) 551-4489 (Pecaro)
(202) 551-4456 (Timmons)
Fax: (202) 572-1372
Email: pecaros@sec.gov
timmonsn@sec.gov