

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF,

v.

BLACKBIRD CAPITAL PARTNERS, LLC,
ANDREW D. KELLEY, and PAUL H.
SHUMWAY,

DEFENDANTS.

Case No. 2:16-cv-01199-TC

Judge Tena Campbell

ORDER ESTABLISHING A FAIR FUND, APPOINTING TAX ADMINISTRATOR AND
AUTHORIZING PAYMENT OF TAX RELATED FEES, EXPENSES, AND OBLIGATIONS

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (“SEC”) to establish a fair fund, appoint Miller Kaplan Arase LLP (“Miller Kaplan”) as Tax Administrator, and to authorize payment of future tax obligations, and the fees and expenses of the Tax Administrator (the “Motion”) and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion (ECF No. 116) is GRANTED.
2. A Fair Fund is established, 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](#)] for the \$2.3 million, along with any accrued interest and earnings thereon (the “Fair Fund”).
3. Miller Kaplan is appointed Tax Administrator to execute all income tax reporting requirements, including the preparation and filing of tax returns, for all funds under the Court’s jurisdiction in this case.

4. Miller Kaplan shall be designated the Tax Administrator of the Fair Fund, pursuant to Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by those regulations, including but not limited to: (a) obtaining a taxpayer identification number; (b) filing applicable federal, state, and local tax returns and paying taxes reported thereon out of the Fair Fund; and (c) satisfying any information, reporting, or withholding requirements imposed on distributions from the Fair Fund. Upon request, the Tax Administrator shall provide copies of any filings to the SEC's counsel of record.

5. The Tax Administrator shall, at such times as the Tax Administrator deems necessary to fulfill the tax obligations of the Fair Fund, submit a request to the SEC's counsel of record for payment from the Fair Fund of any tax obligations of the Fair Fund.

6. The Tax Administrator shall be entitled to charge reasonable fees for tax compliance services and related expenses in accordance with its agreement with the SEC for the Tax Years 2019 through 2021. The Tax Administrator shall, at such times as the Tax Administrator deems appropriate, submit a request to the SEC's counsel of record for payment of fees and expenses from the Fair Fund.

7. The SEC is authorized to approve and arrange payment of all tax obligations owed by the Fair Fund and the fees and expenses of the Tax Administrator directly from the Fair Fund without further approval of this Court. All payments for taxes and the fees and expenses of the Tax Administrator shall be reported to the Court in a final accounting.

IT IS SO ORDERED.

Dated: March 3rd, 2020



Tena Campbell
United States District Court Judge