

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**DAVID RONALD ALLEN, et al.,**

**Defendants.**

**Civil Action No.  
3:11-CV-882-O**

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR AN ORDER DIRECTING RECOVERY OF FUNDS,  
APPOINTING A TAX ADMINISTRATOR, AND AUTHORIZING  
PAYMENT OF TAXES AND TAX ADMINISTRATION FEES AND EXPENSES**

Plaintiff Securities and Exchange Commission (the “SEC”) submits this Memorandum in support of its Motion for an Order (1) directing the recovery of certain funds from the United States Treasury (“Treasury”) for inclusion in an interest-bearing account pending the SEC’s presentation of a plan of distribution to the Court for all funds under the Court’s jurisdiction in this case (the “Fair Fund”); and (2) appointing Miller Kaplan Arase LLP (“Miller Kaplan”), a certified public accounting firm with an office in San Francisco, California, as Tax Administrator to execute all income tax reporting requirements with respect to the Fair Fund and authorizing the payment of taxes and tax administration fees and expenses (the “Motion”). The SEC has determined distribution of the Fair Fund, which has assets exceeding \$1.1 million, feasible, and seeks the requested relief as prerequisites to proposing a plan of distribution to this Court.

## I. The Civil Action

The SEC filed its complaint in this action on April 28, 2011. Dkt. No. 1. On June 20, 2011, the SEC filed a Second Amended Complaint. Dkt. No. 75. In its pleadings, the SEC alleged an ongoing, evolving, multi-million dollar fraudulent scheme perpetrated by the defendants. Between August 2011 and the end of 2012, the Court entered judgments against all of the defendants and several of the relief defendants.<sup>1</sup> *See* Dkt Nos. 126, 129, 132, 133, 185, 132, 170, 176, 175, 176, 177, 185, 208, 238, 242, 243, 252, 253, 256, 272.

## II. The Receivership and the Initial Distribution

By order dated January 12, 2012, the Court established a receivership estate comprised of the assets and records of the Defendants and Relief Defendants, and appointed Michael J. Uhl as Receiver (the “Receiver”). Dkt. Nos. 192, 206. The Receiver retained Miller Kaplan to assist with receivership tax issues. *See* Dkt. No. 347, p. 2. On July 6, 2012, this Court established a fair fund in accordance with Section 308(a) of the Sarbanes-Oxley Act of 2002 so that civil penalties could be distributed to harmed investors, and on January 8, 2015, the Court authorized the Receiver to make an interim distribution from the receivership estate and approved a distribution pursuant to a “rising tide” distribution method (the “Receiver’s Distribution Plan”). Dkt. Nos. 237, 334. Pursuant to the Receiver’s Distribution Plan, the Receiver distributed approximately \$995,000 to ninety-four (94) investors. *See* Dkt. No. 356-1.

By Order dated June 18, 2018, this Court terminated the receivership and ordered the Receiver to transfer all remaining assets to the SEC to hold pending further Court order (the “Termination Order,” Dkt. No. 353).

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<sup>1</sup> Judgments have not been entered against Relief Defendants Debt Management Associates, Ltd., Community of Pleasant Ridge, Ltd., and D-Cap (II-XVII) Partners, Ltd. Records from the Texas Secretary of State reflect canceled or forfeited registrations for each of these entities, and the Receiver has indicated that all have been dissolved.

**III. The Fair Fund, the Proposed Distribution, and Recovery of Funds from Treasury**

Although collection activity continues, the SEC does not anticipate any additional significant collections such that it should postpone distribution. Rather, if and when this Court grants the relief requested in the Motion, the SEC intends to file a motion seeking approval of a distribution much like that previously conducted by the Receiver, using the distribution methodology already approved by this Court in connection with the Receiver's distribution. In anticipation of distribution, the SEC now seeks the accompanying proposed order recovering the funds sent to Treasury so that they can be included in any distribution to harmed investors and earn interest until a distribution is approved.

This Court has over \$1.1 million under its jurisdiction in this matter, comprised of the assets transferred by the Receiver to the SEC (\$152,815.62), amounts paid to the SEC in satisfaction of disgorgement judgments and remitted pursuant to Court Order to Treasury (approximately \$726,000), approximately \$4,800 remitted by the SEC to Treasury as post-judgment interest, and amounts paid to the Clerk of the Court in satisfaction of judgments (approximately \$42,000). These amounts, plus accrued interest, comprise the Fair Fund.

The approximately \$153,000 transferred to the SEC by the Receiver is currently held by the SEC in an interest-bearing account at Treasury's Bureau of Fiscal Services (the "BFS Account"). The approximately \$726,000 in disgorgement remitted by the SEC to Treasury is not earning interest but, upon this Court's order, can be recovered by the SEC and combined with the funds in the interest-bearing BFS Account. The funds paid to the Clerk are currently held in an interest-bearing account with the Court Registry (the "CRIS Account").

With respect to the approximately \$4,800 remitted by the SEC to Treasury as post-judgment interest, this Court can order its recovery by reclassifying any such payments as

disgorgement, prejudgment interest, and/or civil penalties if those remedies have not yet been satisfied. In order to maximize the amount available for distribution to harmed investors, the SEC includes in the proposed order such reclassification for current and future collections, the recovery of those funds from Treasury, and their inclusion in the Fair Fund.

**IV. Appointment of a Tax Administrator**

The SEC also seeks the appointment of Miller Kaplan, the accounting firm previously retained by the Receiver, as Tax Administrator to resume activities to ensure that the Fair Fund timely complies with all income tax reporting requirements.

The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. A Tax Administrator, on behalf of the Fair Fund, should be appointed and authorized to take all necessary steps to enable the Fair Fund to obtain and maintain the status of a taxable QSF, including the filing of all required elections and statements contemplated by those provisions. The Tax Administrator would cause the Fair Fund to pay taxes in a manner consistent with treatment of the Fair Fund as a QSF.

The reasonable costs, fees, and other expenses incurred in the performance of the Tax Administrator’s duties would be paid by the Fair Fund in accordance with the agreement between the SEC and Miller Kaplan. The current agreement provides for compensation for services and expenses as follows:

| SERVICE   | FIXED FEE |
|---|-----------|
| Income tax returns, including items a-f (below).  | \$1,600   |
| Income tax returns, including items 1-6 (below), for funds with assets of \$120,000 or less or that are open and closed within the same year. | \$700     |

| SERVICE                                    | FIXED FEE   |
|--|-------------|
| Loss Carryback (claim for refund) returns. | Up to \$550 |

Fixed fee tax compliance services include:<sup>2</sup>

- a) Obtain a federal tax identification number (“FEIN”) for the QSF.
- b) Prepare and file federal and state income tax returns, as required.
- c) Where required, calculate quarterly estimated tax payments and provide information to the SEC so that payments may be made timely.
- d) Make arrangements with the SEC or its agents to pay tax liability.
- e) Calculate and recommend retention of a reserve for penalties and interest to be assessed as a result of any late filing of tax returns and late payment of taxes.
- f) Determine and comply with tax reporting obligations of the QSF relating to distributions or payments to vendors, if applicable.

The SEC further requests that SEC staff be authorized to approve and arrange payment of all future tax obligations and Tax Administrator fees and expenses from the Fair Fund without further Court approval. Authorizing the SEC staff to approve and pay future tax obligations and tax administration fees and expenses from the Fair Fund without further Court approval will expedite the payment process, reducing the risk of late tax payments and penalties. All tax payments and tax administration fees will be reported to this Court in the final accounting of the Fair Fund once any court authorized distribution is complete.

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<sup>2</sup> These fixed fees include all copying expenses, and any internal expenses of the Tax Administrator in performing these services such as facsimile fees and telephone charges. Expenses that are not included are postage, expedited delivery fees (such as Federal Express), and other extraordinary costs, such as extended telephone conferences and reports. Additional tax compliance services and services for the administration of the QSF would be provided at the SEC’s request and billed at the Tax Administrator’s current rates discounted by 20%.

For the foregoing reasons, the SEC respectfully requests that this Court grant the relief sought in the Motion.

Dated: March 5, 2019

Respectfully submitted,

s/Catherine E. Pappas

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