

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**CR INTRINSIC INVESTORS, LLC, MATTHEW
MARTOMA, and DR. SIDNEY GILMAN,**

Defendants.

No. 12-cv-8466(VM)

And

**CR INTRINSIC INVESTMENTS, LLC,
S.A.C. CAPITAL ADVISORS, LLC,
S.A.C. CAPITAL ASSOCIATES, LLC,
S.A.C. INTERNATIONAL EQUITIES, LLC,
S.AC. SELECT FUND, LLC,**

Relief Defendants.

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
NOTICE OF MOTION AND MOTION FOR
AN ORDER TO TRANSFER FUNDS FOR DISTRIBUTION**

NOTICE

PLEASE TAKE NOTICE, that based upon the accompanying Motion, Memorandum, and the Proposed Order, and all other prior proceedings and papers herein, the Commission will move this Court, at a date and time to be determined by the Court, before the Honorable Victor Marrero, at the United States Courthouse for the Southern District of New York, 500 Pearl Street, New York, New York 10007, for an Order to Transfer Funds for Distribution so that injured investors may be compensated for their losses.

MOTION

In accordance with the Distribution Plan for the CR Intrinsic Fair Fund approved by this Court on February 4, 2016 (“Distribution Plan”),¹ the Securities and Exchange Commission (“Commission”) respectfully requests that the Court enter an Order: (1) Directing the Clerk of the Court to issue a check for \$494,462,225.22 (the “Funds”) payable to “SEC v. C.R. Intrinsic Fair Fund” to Huntington Bank for distribution by the distribution agent, Garden City Group, LLC (“Distribution Agent”² or “GCG”) under the case name designation “SEC v. CR Intrinsic Investors, LLC, et al”; (2) directing the Distribution Agent to deposit the Funds in an escrow account established at Huntington Bank pursuant to Paragraphs 2.25-2.26 of the Distribution Plan; and (3) Authorizing the Distribution Agent to distribute the Funds to Eligible Claimants in accordance with the terms the Distribution Plan.

MEMORANDUM

I. BACKGROUND

On November 20, 2012, the Commission brought suit³ against Defendant CR Intrinsic Investors, LLC (“CR Intrinsic”) and two other defendants, Dr. Sidney Gilman (“Gilman”)⁴ and Matthew Martoma (“Martoma”).⁵ On March 15, 2013, the Commission amended its complaint

¹ Dkt. 122.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Distribution Plan approved by the Court.

³ Dkt. 1.

⁴ On November 21, 2012, Gilman consented to entry of a Final Judgment. Gilman agreed to disgorgement of \$186,781, and prejudgment interest of \$48,087. Pursuant to that Final Judgment, the payments from Gilman to the Commission were sent to the United States Treasury. Dkt. 3.

⁵ In a parallel criminal proceeding, Martoma was convicted of two counts of securities fraud and one count of conspiracy to commit securities fraud in February 2014, and was sentenced on September 8, 2014, to nine years in

to include Relief Defendants CR Intrinsic Investments, LLC, S.A.C. Capital Advisors, LLC, S.A.C. Capital Associates, LLC, S.A.C. International Equities, LLC, and S.A.C. Select Fund, LLC (collectively with CR Intrinsic, the “Defendants”).⁶ The Amended Complaint alleged that the Defendants made approximately \$275 million in illegal profits or avoided losses in July 2008 by trading ahead of a negative public announcement involving the clinical trial results for an Alzheimer’s drug being jointly developed by Elan Corporation, plc (“Elan”) and Wyeth.

The Defendants entered consent agreements⁷ and on June 18, 2014 the Court entered Final Judgments ordering the Defendants to collectively pay disgorgement, prejudgment interest, and civil penalties to resolve the Commission’s claims.⁸ A total of \$601,832,697.04 was paid to the Clerk of the Court and deposited into an interest-bearing account with the Court Registry Investment System (“CRIS”) account on August 6, 2014 in satisfaction of the Final Judgments.⁹

On January 26, 2015, the Court established a Fair Fund (“Fair Fund”) comprised of the amounts paid collectively by the Defendants to compensate investor victims of the fraud and appointed Damasco & Associates LLP, as Tax Administrator to handle the tax obligations of the Fair Fund.¹⁰ On April 22, 2015, the Court entered an order appointing GCG as the Distribution Agent for the Fair Fund to assist in overseeing the administration of the distribution of the Fair Fund in consultation with Commission staff, pursuant to the terms of the Distribution

prison and ordered to pay criminal forfeiture totaling approximately \$9.3 million. 12 CR 973 PGG, 2013 WL 2435082 (S.D.N.Y. June 5, 2013). Martoma’s appeal of the criminal conviction is pending.

⁶ Dkt. 25.

⁷ Dkt. 59.

⁸ Dkt. 60, 61, 62, 63, 64, 65.

⁹ The payment is represented by Receipt Number 14465400564.

¹⁰ Dkt. 84. As of October 1, 2016, Damasco and Associates, LLC (“Damasco”), became a part of Miller Kaplan Arase LLC (“Miller Kaplan”). As part of that transaction, Miller Kaplan assumed all of Damasco’s obligations as Tax Administrator in this matter.

Plan.¹¹ On February 4, 2016, the Court approved the Distribution Plan.¹² As of August 7, 2017, the balance of the Fair Fund is approximately \$604,032, 899.15.

II. DISBURSEMENT OF THE FAIR FUND

Pursuant to the Distribution Plan, the Distribution Agent has prepared and submitted to the Commission staff a list of Eligible Claimants, and the Approved Claim for each Eligible Claimant (the “Final Payee List”).¹³ As the amount of the Fair Fund is greater than the aggregate Eligible Loss Amounts, all of the Eligible Claimants’ Loss Amounts will be fully compensated. The Distribution Agent has also submitted the Declaration of Lorri Staal (“Declaration”) in support of this Motion, filed herewith as Exhibit A, which provides a detailed explanation of the procedures the Distribution Agent used to develop the Final Payee List. The Final Payee List and the Declaration have been reviewed by the undersigned Commission Counsel who have no objections.¹⁴

¹¹ Dkt. 84.

¹² Dkt. 122.

¹³ The Final Payee List was provided to the Commission staff for its review and acceptance and will be provided to the Court upon request under seal.

¹⁴ There are still claims pending for which no final determination of eligibility has been made. These claims consist primarily of claims for which the Distribution Agent has not yet received adequate documentation. Once the Distribution Agent has completed its review of these claims and makes a determination of eligibility, the Commission staff will decide whether to recommend to the Court a second distribution. If so, the Commission will petition the Court for a second order to disburse funds to the Distribution Agent, which if approved, will be used to pay those newly approved claims.

WHEREFORE, for all the foregoing reasons, the Plaintiff Securities and Exchange Commission respectfully requests that this Court grant its Motion for an Order to Transfer Funds for Distribution and grant such other relief as it deems necessary and proper.

Dated: August 7, 2017

Respectfully submitted,

/s/Susan S. Pecaro

Susan S. Pecaro
Nichola L. Timmons
Attorneys for Plaintiff
Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5876
Tel: (202) 551-4489 (Pecaro)
Tel: (202) 551-4456 (Timmons)
Fax: (202)772-9363
Email: pecaros@sec.gov
timmonsn@sec.gov