

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LONGFIN CORP., et al.

Case No.: 18-cv-2977-DLC

**(Proposed) Order Establishing a Fair
Fund, Appointing a Tax
Administrator and a Distribution
Agent, and Related Relief**

The Court having reviewed the Motion of Plaintiff Securities and Exchange Commission (the “SEC”) for an Order (1) establishing a fair fund; (2) appointing Miller Kaplan Arase LLP (“Miller Kaplan”) as tax administrator; (3) appointing Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as distribution agent, and (4) authorizing payment of tax obligations and administrative fees and expenses from the fair fund without further Court Order, and for good cause shown,

IT IS HEREBY ORDERED that:

1. The Motion is **GRANTED**;

Fair Fund

2. A Fair Fund is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7246] for the funds collected in the captioned matter (the “Fair Fund”). Any interest or earnings on the Fair Fund and any additional timely collections or receipt of funds directed to the Fair Fund will be added to the Fair Fund to be used for the benefit of harmed investors.

Tax Administrator

3. Miller Kaplan is appointed tax administrator (the “Tax Administrator”) to execute all income tax reporting requirements, including the preparation and filing of tax returns, for the Fair Fund. As the Tax Administrator, Miller Kaplan shall:

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

b) Perform services in accordance with, and be entitled to charge reasonable fees for tax compliance services and related expenses. 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; and

c) 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 authorization to pay from the Fair Fund tax obligations of the Fair Fund.

4. 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 order of this Court. The Tax Administrator will submit invoices of all fees and expenses incurred in connection with its respective duties to the SEC's counsel of record for review and, as appropriate, payment. All payments will be reflected in the final accounting referenced below.

Distribution Agent

5. Epiq is appointed Distribution Agent (the “Distribution Agent”) for the Fair Fund, to oversee the administration and distribution of the Fair Fund in coordination with the SEC’s counsel of record pursuant to the terms of a distribution plan (the “Plan”) to be approved by this Court. The Distribution Agent will, among other things:

- a) Perform services in accordance with the pricing schedule and cost proposal submitted by the Distribution Agent to the SEC;
- b) Work with the SEC’s counsel of record to develop a distribution plan to be approved by the Court;
- c) Determine the identities and locations of harmed investors;
- d) Engage an independent, third-party firm, not unacceptable to the SEC staff, to perform a set of agreed upon procedures, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan approved by the Court;
- e) Quantify losses and distribution amounts of investors eligible for a distribution under a Court-approved Plan ;
- f) Respond to investor and distribution related inquiries;
- g) Calculate a reserve for fees, expenses, and taxes (the “Reserve”) and perform all activities necessary for the distribution of Fair Fund net the Reserve in accordance with the Plan;
- h) Coordinate with the Court-appointed Tax Administrator to ensure timely compliance with all tax related obligations;
- i) File with the Court or provide to the SEC’s counsel of record to file with the Court, a quarterly status report within forty-five (45) days of Court approval of the Plan, and provide additional reports within twenty (20) days after the end of every quarter thereafter.

Upon establishing an escrow account into which the monies in the Fair Fund are transferred, the Distribution Agent will include a quarterly accounting report, in a format to be provided by the SEC, in the status report. The status report will inform the Court and the SEC of the activities and status of the Fair Fund during the relevant reporting period and the quarterly accounting report will specify, at a minimum:

- i) The location of the account(s) comprising the Fair Fund; and
- ii) An interim accounting of all monies in the Fair Fund as of the most recent month-end, including the value of the account(s), all monies earned or received into the account(s), funds distributed to eligible claimants under the Plan, and any monies expended from the Fair Fund to satisfy fees, expenses, and taxes, incurred or required in the administration of the Fair Fund or the implementation of the Plan.

j) Comply with the Plan and all Court orders;

k) Be entitled to charge reasonable fees and related expenses incurred in the performance of its duties, in accordance with the cost proposal submitted to the SEC's counsel of record. The SEC is authorized to approve and arrange payment of the fees and expenses of the Distribution Agent directly from the Fair Fund without further order of this Court. The Distribution Agent will submit invoices of all fees and expenses incurred in connection with their respective duties to the SEC's counsel of record for review and, as appropriate, payment. All payments will be reflected in the quarterly and final accountings referenced herein.

Additional Provisions

6. Upon completing its duties as set forth herein, the Distribution Agent, in consultation with the Tax Administrator, will jointly provide to the SEC's counsel of record a final

accounting in a form provided by the SEC's counsel of record; a final report providing statistics related to the distribution, including amounts disbursed to investors, amounts returned and/or not delivered or negotiated, outreach efforts on unnegotiated payments and the costs and results of the same, and statistics concerning payments made to individuals and entities; and an affidavit in a format acceptable to the SEC's counsel of record summarizing its activities as Distribution Agent.

7. The Distribution Agent and/or the Tax Administrator may be removed *sua sponte* at any time by the Court or upon motion of the SEC and replaced with a successor. In the event Distribution Agent and/or the Tax Administrator decide to resign, the resigning entity must first give written notice to the SEC's counsel of record and the Court of its intention, and resignation, if permitted, will not be effective until the Court has appointed a successor. The resigning entity will then follow instructions from the Court or a successor for relinquishing its duties, including all records related to Fair Fund monies and property. Unless otherwise ordered, the resigning entity will within 30 days of the notice of resignation or removal, file with the Court an final accounting and a report of its activities as further set forth above in paragraph 6, and provide any other information requested by the SEC, the Court, or the successor.

8. The Court will retain exclusive jurisdiction over the distribution, including, but not limited to, claims against the Distribution Agent and/or Tax Administrator asserting liability for violation of any duty imposed by the Plan or other Court order.

IT IS SO ORDERED.

Dated: April 15, 2020



DENISE COTE
United States District Judge