

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

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**J. ROBERT DOBBINS, DOBBINS CAPITAL  
CORP., DOBBINS OFFSHORE CAPITAL,  
LLC, DOBBINS PARTNERS, L.P., and  
DOBBINS OFFSHORE, LTD.,**

**Defendants,**

**Tracey Dobbins,**

**Relief Defendant.**

**Civil Action No.  
3:04-CV-0605-D**

**SECURITIES AND EXCHANGE COMMISSION’S PROPOSED DISTRIBUTION PLAN  
AND MEMORANDUM IN SUPPORT OF ITS MOTION TO APPROVE A  
DISTRIBUTION PLAN AND APPOINT A DISTRIBUTION AGENT**

The Securities and Exchange Commission (the “SEC”) respectfully submits its proposed Distribution Plan (the “SEC Plan”) and its Memorandum in support of its Motion to Approve a Distribution Plan and Appoint a Distribution Agent (the “Motion”). Upon notification by the SEC of the expiration of the notice period described below, the SEC requests that this Court enter an Order approving its proposed distribution of approximately \$137,000 using the Court-approved methodology underlying the Court-appointed receiver’s (the “Receiver”) prior distributions.

Concurrent with the filing of the Motion, the SEC has sent notice in the form attached to its Rule 7.1 Certification (the “Investor Notice”) to the last known addresses of investors and

creditors included as distributees in prior distributions. The Investor Notice provides directions on how to object to the Motion and, to those for whom the SEC has not yet obtained current contact information, provides a final chance to provide current contact information to the undersigned in order to be eligible for a distribution. Upon expiration of the thirty (30) day notice period, the SEC will notify the Court of any objections and its response(s) to the same with a copy of the notification sent to all objecting entities, and seek entry of the proposed Order accompanying this Memorandum.

## I. BACKGROUND

### A. The SEC Action

On March 23, 2004, the SEC filed its Complaint in this action against J. Robert Dobbins (“Dobbins”), Dobbins Capital Corp., Dobbins Offshore Capital, LLC, Dobbins Partners, L.P., and Dobbins Offshore, Ltd. (collectively, the “Defendants”), alleging that, from January 2000 through March 2004, Dobbins engaged in a scheme to defraud investors in two unregistered hedge funds: Dobbins Partners, L.P. and Dobbins Offshore, Ltd. (collectively, the “Dobbins Hedge Funds”). According to the Complaint, Dobbins, who managed the Dobbins Hedge Funds through two investment advisers, Dobbins Capital Corp. and Dobbins Offshore Capital, LLC (collectively, the “Investment Advisers”), raised over \$50 million from more than 50 investors through false statements arbitrarily overvaluing Dobbins Hedge Funds’ holdings, thereby inflating the Dobbins Hedge Funds’ performance. Using the inflated valuations, Dobbins caused the funds to pay management and incentive fees of over \$5.3 million to Dobbins and the Investment Advisers. The SEC charged the Defendants with violations of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

On July 12, 2005, the Court entered a final judgment as to Dobbins (the “Final Judgment”) requiring, in relevant part, Dobbins to pay \$6,000,000 in disgorgement and prejudgment interest, and a civil penalty of \$150,000. (Dkt. No. 124). In the Final Judgment, the Court also appointed the Receiver to marshal, liquidate, distribute, and if appropriate, dissolve certain property. Also on July 12, 2005, the Court granted default judgment against Dobbins Partners, L.P., conveying that entity to the Receiver for purposes of liquidation, dissolution, and distribution. (Dkt. No. 123).

**B. Prior Distributions and the Termination of the Receivership**

By Order dated March 11, 2009, this Court approved the Receiver’s distribution plan (the “Receiver’s Plan”). (Dkt. No. 205). Pursuant to the Receiver’s Plan, the Receiver made a *pro rata* interim distribution of \$2 million to thirty-six investors and one trade creditor who suffered harm as a result of the actions of the Defendants (the “Aggrieved Parties”). Each Aggrieved Party shared in the distribution based on their net out-of-pocket loss as a percentage of the total out-of-pocket losses of all Aggrieved Parties.

Subsequent to this initial distribution, the Receiver made three more distributions pursuant to the Receiver’s Plan. Over the course of the Receivership, the Receiver distributed

approximately \$3.1 million to thirty-seven Aggrieved Parties as follows:

<b>Amount</b>	<b>Date (approx.)</b>
\$ 2,000,000.00	5/11/2009
\$ 800,000.00	8/4/2009
\$ 200,000.00	6/16/2010
\$ 135,000.00 <sup>1</sup>	10/1/2012

On October 10, 2012, the Receiver filed a Final Status Report, concluding that no other salvageable assets exist and that he had completed his duties under the Final Judgment. (Dkt. No. 224). On February 8, 2013, this Court entered an order discharging the Receiver. (Dkt. No. 228).

## **II. THE PROPOSED DISTRIBUTION AND THE SEC PLAN**

In December 2016, upon learning of additional assets available to satisfy the Final Judgment, the SEC applied to this Court for an Order directing the turnover of the additional funds to the SEC, pending the SEC's determination as to the feasibility of further distribution to the Aggrieved Parties. (Dkt. No. 230). On January 6, 2017, the Court granted the SEC's application and entered an Order directing that all future funds collected be sent to the SEC, to be held until further Order of this Court (the "January 6 Order"). (Dkt. No. 231).

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<sup>1</sup> Based on the Receiver's September 2009 correspondence to Aggrieved Parties accompanying the final distribution, it appears that he could not locate two of the Aggrieved Parties—AMAS Hedge Fund, Ltd., and Iscandar International, S.A.-- and only distributed to thirty-five Aggrieved Parties. At this time, the SEC also has been unable to locate these two Aggrieved Parties (and seven others). *See* Section III.C. below.

**A. The Proposed Distribution**

Pursuant to the January 6 Order, approximately \$144,000 is currently held by the SEC at the U.S. Treasury in an interest bearing account (the “Distribution Fund”). Other than accrued interest, the SEC does not expect to collect any additional funds in this matter.

The SEC proposes to distribute these funds using the Court-approved methodology in the Receiver’s Plan to the Aggrieved Parties that the SEC locates through the efforts described below, III.C. In order to minimize administrative costs, the SEC proposes that the undersigned, Catherine E. Pappas, Senior Adviser in the SEC’s Division of Enforcement, act as Distribution Agent for the Distribution Fund. The SEC estimates that administration costs will aggregate to \$6,800 (the “Administrative Costs”), as follows:

<b>Date(s) Incurred</b>	<b>Payee</b>	<b>Description</b>	<b>(“up to”) Amount</b>
2017-18	Tax Administrator	Tax Administrator Fees related to 2017-18	\$ 3,700
2017-2018	Tax Administrator	Non-fixed fee compliance services such as unbilled work in progress, information reporting, final accounting, unanticipated issues with IRS, etc.	\$ 3,100
2017-2018	Bureau of the Fiscal Service, Treasury Department	Investment fees	
Total			\$6,805

**B. The SEC Plan**

1. The Distribution Agent appointed by the Court, Catherine E. Pappas, an SEC employee:

- a) shall receive no compensation for the services performed in administering the Distribution Fund, other than her regular salary as an employee of the SEC;
- b) shall perform such functions as are necessary to implement and administer the SEC Plan. In performing this function, the Distribution Agent shall be deemed to be acting within the scope of her employment with the SEC. In carrying out her duties, the Distribution Agent may be assisted by other SEC staff acting under her supervision;
- c) shall coordinate with the Tax Administrator to ensure that the Distribution Fund, a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, and related regulations pertaining to QSFs, 26 C.F.R. §§ 1.468B-1 through 65, complies with all related legal and regulatory requirements, including without limitation, satisfying any reporting or withholding requirements imposed on distributions from the Distribution Fund; and
- d) with her designees, agents and assistants, shall not be required to post a bond, and shall not be liable to any person for their actions hereunder, except on a finding of willful disregard of duty.

2. The Distribution Agent will distribute the “Net Distribution Fund”, defined as the Distribution Fund less the Administrative Costs, to Located Aggrieved Parties, defined as the Aggrieved Parties that the SEC has been able to locate through, among other things, the use of commercial databases regularly available to the Division of Enforcement of the SEC, last known contact information provided to the SEC by the Receiver, and through the Investor Notice. These efforts are deemed reasonable for the purposes of this Plan.

3. The Net Distribution Fund will be distributed in accordance with the previously approved methodology in the Receiver’s Plan, including the Receiver’s calculation of net out-of-pocket loss. As described and calculated in connection with the Receiver’s Plan, each Located

Aggrieved Party will share in the distribution based upon their net out-of-pocket loss as a percentage of the total out-of-pocket losses of all of the Located Aggrieved Parties. Schedule 1, attached, includes the net loss, percentage of aggregate loss, and proposed distribution that each Aggrieved Party may receive in this distribution *if all Aggrieved Parties are located* (the “Aggrieved Party Distribution”) and if nothing else changes.<sup>2</sup> The numbers reflected on Exhibit 1 are likely to change prior to the issuance of payments. Among other things, the Aggrieved Party Distribution attributable to any Aggrieved Party who is not located through the SEC’s reasonable efforts will be returned to the Net Distribution Fund and distributed to Located Aggrieved Parties in accordance with the described methodology.

4. Prior to distributing any funds to Located Aggrieved Parties, the Distribution Agent will set aside, as a reserve, the Administrative Costs, and may cause invoices up to the amounts set forth above to be paid from the Distribution Fund upon proper documentation and without further Court Order.

5. The Distribution Agent will make a payment to each Located Aggrieved Party through the United States Department of the Treasury’s Bureau of the Fiscal Service (“BFS”) by electronically transferring funds through the Automated Clearing House or mailing a check to the payee. The Distribution Agent will compile the information, prepare a payment file, and verify the payment file’s completeness and accuracy for submission to SEC staff who, without further Court Order, will make the disbursements through BFS. The payment will be preceded by a communication from the SEC that includes, if and as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting and other related

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<sup>2</sup> Although Aggrieved Parties are identified by name in connection with the Investor Notice, they are identified by number on the attached schedule to maintain the confidentiality of their loss and possible distribution. Aggrieved Parties will be informed of their Investor Number in the Investor Notice.

tax matters; (c) specification of the date on which the checks will be void (non-negotiable); and (d) the name of a person to contact with questions concerning the distribution. The communication will clearly indicate that the money is being distributed from a Distribution Fund established in the captioned case. Checks that are not negotiated prior to the Stale Date shall be voided, and the distribution amount returned to the Distribution Fund for disposition in accordance with this Plan. Electronic payments will be made only to cash equivalent accounts (*e.g.*, checking or savings accounts).

6. The SEC Plan contemplates one distribution of the Net Distribution Fund to Located Aggrieved Parties (the “Initial Distribution”). Notwithstanding, if funds remain in the Net Distribution Fund after the initial distribution and/or if additional funds are received in this action, the Distribution Agent in her sole discretion, and without further Order of the Court, will make an assessment as to whether it is feasible and justifiable to attempt to distribute the remaining funds (“Additional Distribution”). Any Additional Distribution will be made pursuant to the SEC Plan; however, in connection with any Additional Distribution, the Distribution Agent may further, in her discretion, and without further Order of the Court, direct only the issuance of checks that are \$10 or more to Aggrieved Parties that negotiated the payments sent in the Initial Distribution, grossing up payments proportionately to ensure the payment of most, if not all, funds remaining in the Net Distribution Fund to Located Aggrieved Parties.

7. Upon completion of all distributions under this Plan and the payment of all Administrative Costs, the Distribution Agent will file a final accounting with the Court and seek an Order terminating the Distribution Fund, directing the SEC to remit any residual to the U.S. Treasury, and discharging the Distribution Agent. Any funds, assets, or proceeds that the Court

or the SEC may collect in the future in the captioned action in satisfaction of the Final Judgment shall thereafter be remitted to the U.S. Treasury unless the Court directs otherwise.

**C. The SEC's Efforts to Locate Aggrieved Parties**

Of the thirty-seven Aggrieved Parties originally identified by the Receiver and included in the Receiver's first distribution,<sup>3</sup> the SEC has confirmed the location of twenty-eight. The nine with unconfirmed locations, including the two that were not included in the Receiver's final distribution, are identified on Exhibit B to the Investor Notice. For each, the SEC tried to locate the entity through the use of commercial databases regularly available to the Division of Enforcement of the SEC, as well as through last known contact information provided to the SEC by the Receiver, information provided by other Aggrieved Parties, and if foreign, through the SEC's Office of International Affairs. The SEC sent correspondence to identified addresses; electronic mail to electronic mail addresses if provided or located; and attempted telephone contact if a telephone number was provided or located. None of these Aggrieved Parties responded to the SEC's outreach attempts. If they fail to timely respond to the Investor Notice, they will not be included in the distribution and their respective Aggrieved Party Distribution will be returned to the Net Distribution Fund and distributed to the Located Aggrieved Parties.

**III. LEGAL AUTHORITY**

A district court has broad discretion in approving a plan for distribution, and that determination is reviewed for abuse of discretion. *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001). *See also SEC v. Quan*, No. 16-1072, 2017 U.S. App. LEXIS 16663, \*16 (8th Cir. Aug. 30, 2017); *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010); *SEC v. Malek*, 397 Fed. Appx. 711, 715 (2d Cir. 2010), *citing SEC v. Loewenson*, 290 F.3d 80, 87 (2d

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<sup>3</sup> *See* Dkt. No. 201.

Cir. 2002); *WorldCom, Inc. v. SEC*, 467 F.3d 73, 84 (2d Cir. 2006). The job of the district court is to ensure that the proposed plan of distribution is fair and reasonable. *SEC v. Terax Energy, Inc.*, Civ. Act. No. 3:07-CV-1554-BD, 2009 U.S. Dist. LEXIS 100897, \*6 (N.D. Tx. Oct. 28, 2009) (Kaplan, J.) *See also Quan*, 2017 U.S. App. LEXIS 16663, \*16; *Wealth Mgmt.*, 628 F.3d at 332; *SEC v. J. P. Morgan Sec. LLC*, Civ. Act. No. 12-1862, 2017 U.S. Dist. LEXIS 113029, \*2, \*9 (D.D.C. Jul. 20, 2017); *SEC v. CR Intrinsic Investors, LLC*, 164 F. Supp. 3d 433, 435 (S.D.N.Y. 2016) *See also WorldCom*, 467 F.3d at 83-85 (because the SEC is fulfilling a statutory role in determining how to distribute recovered funds to investors, it is entitled to the deference of a “fair and reasonable” standard—that the plan fairly and reasonably distributes limited funds among the potential claimants).

By its Order dated May 11, 2009 (Dkt. No. 205), this Court approved the methodology underlying the Receiver’s Plan, thus finding the methodology to fairly and reasonably distribute the limited funds among the potential claimants. At that time, the Court also approved the Receiver’s exclusion from the distribution “interested parties located overseas who were contacted by the Receiver but never responded to the Receiver’s requests for information.” (Dkt. No. 201, p. 3). Accordingly, the SEC Plan -- to distribute to Located Aggrieved Parties using the methodology contained in the previously approved Receiver’s Plan, and excluding unlocated and/or unresponsive Aggrieved Parties -- has already been substantially approved by the Court.

Included in the SEC Plan also is the Distribution Agent’s authority to pay without further Court Order up to the estimated Administrative Costs so as to avoid the assessment of late payment penalties and make timely payment of Administrative Costs as they come due. This authority is no more than was previously given to the Receiver (Dkt. No. 124, p.7), and is fair and reasonable in its practicality. The remaining provisions, including the mechanics of

payment, the disposition of any residual, and the reporting obligations to the Court, are administrative in nature.

By way of further relief, the SEC moves this Court to appoint the undersigned, Catherine E. Pappas, an SEC employee, as Distribution Agent to perform such functions as are necessary to implement and administer the SEC Plan, including coordinate with the Tax Administrator to ensure compliance with applicable tax laws. As set forth in the SEC Plan, the Distribution Agent, an SEC employee, shall receive no compensation other than her regular salary for her services in administering the Distribution Fund. The appointment of an SEC employee will expedite the distribution process and avoid the costs and expenses that would ordinarily be incurred by the appointment of a third-party administrator, thus maximizing return to Aggrieved Parties.

#### IV. CONCLUSION

For the reasons set forth above, the SEC respectfully requests that the Court grant the requested relief.

Dated: November 30, 2017

Respectfully submitted,

s/ Catherine E. Pappas  
Catherine E. Pappas  
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INVESTOR NUMBER	PERCENTAGE LOSS	NET LOSS	PROPOSED DISTRIBUTION (current net fund value: \$137,039.93)
1	1.90%	\$1,500,000.00	\$ 2,600.17
2	4.87%	\$3,849,995.00	\$ 6,673.77
3	1.14%	\$900,000.00	\$ 1,560.10
4	1.52%	\$1,200,000.00	\$ 2,080.14
5	0.78%	\$616,995.00	\$ 1,069.53
6	0.38%	\$300,000.00	\$ 520.03
7	0.63%	\$500,000.00	\$ 866.72
8	0.32%	\$250,000.00	\$ 433.36
9	0.30%	\$239,975.00	\$ 415.98
10	6.02%	\$4,760,000.00	\$ 8,251.22
11	0.94%	\$740,840.00	\$ 1,284.21
12	9.04%	\$7,146,414.00	\$ 12,387.95
13	5.84%	\$4,615,832.00	\$ 8,001.31
14	2.63%	\$2,076,132.00	\$ 3,598.87
15	1.26%	\$1,000,000.00	\$ 1,733.45
16	0.90%	\$710,000.00	\$ 1,230.75
17	1.20%	\$945,923.00	\$ 1,639.71
18	6.96%	\$5,500,000.00	\$ 9,533.97
19	1.26%	\$1,000,000.00	\$ 1,733.45
20	2.28%	\$1,800,000.00	\$ 3,120.21
21	6.32%	\$5,000,000.00	\$ 8,667.25
22	0.13%	\$100,650.00	\$ 174.47
23	0.63%	\$496,294.00	\$ 860.30
24	1.26%	\$1,000,000.00	\$ 1,733.45
25	1.90%	\$1,500,000.00	\$ 2,600.17
26	13.99%	\$11,063,165.00	\$ 19,177.44
27	0.32%	\$250,000.00	\$ 433.36
28	0.41%	\$325,000.00	\$ 563.37
29	19.73%	\$15,600,000.00	\$ 27,041.81
30	0.63%	\$500,000.00	\$ 866.72
31	0.35%	\$272,910.00	\$ 473.08
32	0.16%	\$125,000.00	\$ 216.68
33	0.32%	\$250,000.00	\$ 433.36
34	0.55%	\$434,632.00	\$ 753.41
35	1.26%	\$1,000,000.00	\$ 1,733.45
36	1.01%	\$800,000.00	\$ 1,386.76
37	0.87%	\$686,448.00	\$ 1,189.92

\$79,056,205.00 \$

137,039.93