

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	8:15-CV-01903-JDW-TGW
	:	
v.	:	
	:	
ENVIRATRENDS, INC. and RUSSELL F. HARABURDA,	:	
	:	
Defendants.	:	
	:	
	:	

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S UNOPPOSED
MOTION TO APPOINT DISTRIBUTION AGENT AND APPROVE PROPOSED
DISTRIBUTION PLAN**

Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) respectfully moves the Court to enter an Order: (1) appointing Commission employee Nancy Chase Burton as Distribution Agent; and (2) approving the Commission’s proposed plan (the “Distribution Plan”) to distribute the \$150,000 paid by EnviraTrends, Inc. and Russell F. Haraburda (“Haraburda”) to certain harmed investors.

I. BACKGROUND

On August 17, 2015, the Commission filed its Complaint against defendants EnviraTrends, Inc. (“EnviraTrends”), a Sarasota, Florida based development stage company purportedly in the business of selling pet memorial products, and Russell F. Haraburda, the founder and Chief Executive Officer of EnviraTrends (collectively “Defendants”). The Complaint alleged that the Defendants engaged in a fraudulent scheme to sell EnviraTrends securities to the public in unregistered offerings based on false and misleading statements

regarding the company's activities and financial condition, and the purposes for which investors' funds would be used, while Haraburda misappropriated most of the money raised from investors for his own personal use. According to the Complaint, from mid-2009 until at least February 2014, Defendants raised over \$2.3 million through the sale of EnviraTrends stock to over 100 investors in thirteen states. Haraburda misappropriated \$1.8 million, or over 78% of the funds obtained from investors.

On August 20, 2015, the Court entered a Final Judgment against Defendants (Dkt. No. 5). The Defendants were ordered jointly and severally liable for disgorgement of \$2,305,043 together with prejudgment interest in the amount of \$131,384, for a total of \$2,436,427. However, due to Defendants' sworn representations in their Statements of Financial Condition submitted to the Commission, the Court ordered that payment of all but \$150,000 of the disgorgement and prejudgment interest was waived, and did not order a civil penalty. The Defendants were ordered to make the payment within 14 days after entry of the Final Judgment. On August 21, 2015, full payment was made and the \$150,000 comprises the distribution fund ("EnviraTrends Distribution Fund").

On March 4, 2016, the Court appointed Damasco & Associates LLP as the Tax Administrator ("Tax Administrator") to execute all the tax reporting and filing requirements for the EnviraTrends Distribution Fund (Dkt. No. 8).

The Final Judgment against the Defendants states that the Commission may propose a plan to distribute the funds collected from the Defendants. The Commission now moves the Court to approve the proposed distribution plan ("Distribution Plan") so that the funds paid by the Defendants can be distributed to 42 injured investors harmed by the Defendants' conduct.

II. ARGUMENT

A. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See, e.g., SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165, 1182 (2d Cir. 1989).

The Court's review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) (“[u]nless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end.”¹ (citing *Wang*, 944 F.2d at 85)).

For the reasons articulated below, the Commission submits that the proposed Distribution Plan for the EnviraTrends Distribution Fund constitutes a fair and reasonable allocation of the small amount of funds available for distribution and should be approved.

B. The Commission's Proposed Distribution Plan Provides a Fair and Reasonable Allocation of the EnviraTrends Distribution Fund

The Commission's principal goal in fashioning a distribution plan for the EnviraTrends Distribution Fund was to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the injury that investors in EnviraTrends suffered as

¹ Courts have historically deferred to the Commission's decision regarding whether and how to distribute disgorgement and prejudgment interest. *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). With respect to the distribution of civil penalties, courts have held that the decision of whether and how to distribute penalty money is soundly within the Commission's discretion. *Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 72, 84 (2d Cir. 2006).

a result of the Defendants' actions. Here, the total losses suffered by the investors identified by Commission staff during its investigation exceed \$2,000,000 and the amount of money recovered from the Defendants is only \$150,000 (6%). The amount of money lost by the harmed investors is significantly more than the amount of funds that are available for distribution. Normally, in this situation, the Commission would send the funds to the U.S. Treasury as not feasible to distribute. Here, however, the Commission staff desires to distribute a small, but meaningful payment as cost-effectively as possible to certain harmed investors. Commission staff has determined that 42 of the 111 harmed investors who made investments should be compensated for the following reasons: 1) these 42 made investments greater than \$100; 2) a *pro rata* distribution to this group would range from \$ 33.28 to \$ 40,425; 3) their losses comprise 93% of all investor losses; 4) and these 42 were not officers or directors of EnviraTrends (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities) and did not share an address with any officers or directors of EnviraTrends. The Commission's Distribution Plan calculates payments to these 42 injured investors on a *pro rata* basis, and thereby allocates the available funds fairly and reasonably, in a manner proportional to the economic harm they sustained.

C. THE COURT SHOULD APPOINT A DISTRIBUTION AGENT

The Commission proposes Nancy Chase Burton, a Commission employee in the Office of Distributions, as Distribution Agent to administer and implement the proposed Distribution Plan, as described below. As a Commission employee, the Distribution Agent shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Distribution Fund. As the harmed investors are limited in number and known, the appointment of a Commission employee will expedite the distribution process and avoid the

costs and expenses that would ordinarily be incurred by appointing a third party administrator thus maximizing the return to certain investors.

D. THE COURT SHOULD APPROVE THE PROPOSED DISTRIBUTION PLAN

The Commission seeks approval of its Distribution Plan (attached hereto as Exhibit A) to distribute the funds already collected from the Defendants. The Distribution Plan provides for a distribution to certain individuals (the “Eligible Recipients”) who were harmed by the Defendants’ false and misleading statements in connection with unregistered offerings of EnviraTrends securities, and Haraburda’s misappropriation of funds for personal use. The Distribution Plan contemplates that a total of approximately \$150,000, less a \$2,300 reserve for taxes and fees and expenses of the Tax Administrator will be distributed to Eligible Recipients on a *pro rata* basis for the harm created by the Defendants’ conduct. The Distribution Agent plans to quickly distribute the full amount, less any tax obligations and fees and expenses of the Tax Administrator, on a *pro rata* basis to Eligible Recipients, subject to the Court’s approval of the Distribution Plan.

III. CONCLUSION

For the reasons stated above, the Commission hereby moves the Court to:

- (1) Appoint Commission employee, Nancy Chase Burton as Distribution Agent; and
- (2) Approve the Commission’s Distribution Plan.

Attachments:

EXHIBIT A—Proposed Distribution Plan

EXHIBIT B—Redacted Chart

EXHIBIT C—Eligible Recipient Notice of Distribution

Respectfully submitted,

/s/ Keshia W. Ellis

Keshia W. Ellis

Michigan Bar No. P65146

SECURITIES & EXCHANGE COMMISSION

100 F Street, N.E.

Washington, D.C. 20549-5876

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Elliskw@sec.gov

Attorney for Plaintiff

EXHIBIT A

PROPOSED DISTRIBUTION PLAN

Eligible Investors

1. “Eligible Recipients” will be the investors who invested greater than \$100 in shares of EnviraTrends’ stock, who were not officers or directors of EnviraTrends (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities); did not share an address with any officers or directors of EnviraTrends, and who were harmed by the Defendants’ false and misleading statements in connection with unregistered offerings of EnviraTrends securities, and Haraburda’s misappropriation of funds for personal use.

Methodology for Calculating Distribution Amount

2. Determine each Eligible Recipient’s loss (“Eligible Recipient’s Loss”) and calculate the total losses of all Eligible Recipients by calculating the sum of all Eligible Recipients’ Losses (“Total Losses”);

3. Divide each Eligible Recipient’s Loss by the Total Losses. This fractional result represents the Eligible Recipient’s proportion of losses to the pool of Total Losses (“Eligible Recipient’s Proportional Loss”); and

4. Multiply each Eligible Recipient’s Proportional Loss by the EnviraTrends Distribution Fund less any reserve for tax obligations and fees and expenses of the Tax Administrator (“Net Distribution Fund”). The resulting figure represents the amount of the Net Distribution Fund to be distributed to that Eligible Recipient (“Eligible Recipient’s *Pro Rata* Share”) (see Exhibit B).

Distribution Procedure

5. The Net Distribution Fund will be distributed *pro rata* among the Eligible Recipients based upon the calculations in paragraphs 2 through 4 with the payment amounts as set forth in Exhibit B.

6. Following approval of the Distribution Plan by the Court, the Distribution Agent will send a notice (“Notice”) (attached hereto as Exhibit C) to each Eligible Recipient by First Class U.S. Mail. The Notice will provide each Eligible Recipient with a copy of the Distribution Plan, including Exhibit B, which sets forth that investor’s payment amount and requests confirmation of contact information sufficient to issue the distribution payment. The Distribution Agent will send the Notice within 14 days of the date of the order approving the Distribution Plan.

7. Eligible Recipients will have 45 days from the date of the Order approving the Plan to submit the requested information. After receipt of the information from the Eligible Recipients, the Distribution Agent is authorized to provide the SEC’s Office of Financial Management with an unredacted version of Exhibit B containing the names, addresses and amounts to be disbursed to Eligible Recipients. The SEC’s Office of Financial Management shall promptly thereafter cause checks to be issued to the Eligible Recipients in the amounts of their *pro rata* distribution. Each check issued to the Eligible Recipients will state on the face of the check that it is valid for one year. After 60 days from the date on the distribution check, the SEC’s Office of Financial Management will notify the Distribution Agent of the amount of all uncashed checks. Any amount remaining in the EnviraTrends Distribution Fund as a result of uncashed checks, less any expenses to complete the distribution, shall be transmitted to the U.S. Treasury.

8. The Distribution Agent will submit a final report to the Court summarizing the distribution payments, all taxes and tax administration fees and expenses paid, and the amount of funds to be transmitted to the U.S. Treasury. The staff shall seek an order from the Court to terminate the Distribution Fund and to discharge the Distribution Agent, and remit any remaining funds to the Treasury.

EXHIBIT B: PRO RATA SHARE CALCULATION CHART

Eligible Recipient	Total Invested	Proportional Loss	Pro Rata Share
Eligible Recipient #1	\$ 611,000.00	26.95%	\$ 39,805.96
Eligible Recipient #2	\$ 550,000.00	24.26%	\$ 35,831.88
Eligible Recipient #3	\$ 125,000.00	5.51%	\$ 8,143.61
Eligible Recipient #4	\$ 125,000.00	5.51%	\$ 8,143.61
Eligible Recipient #5	\$ 97,515.00	4.30%	\$ 6,352.99
Eligible Recipient #6	\$ 75,000.00	3.31%	\$ 4,886.17
Eligible Recipient #7	\$ 72,500.00	3.20%	\$ 4,723.29
Eligible Recipient #8	\$ 65,000.00	2.87%	\$ 4,234.68
Eligible Recipient #9	\$ 60,000.00	2.65%	\$ 3,908.93
Eligible Recipient #10	\$ 60,000.00	2.65%	\$ 3,908.93
Eligible Recipient #11	\$ 52,500.00	2.32%	\$ 3,420.32
Eligible Recipient #12	\$ 50,000.00	2.21%	\$ 3,257.44
Eligible Recipient #13	\$ 50,000.00	2.21%	\$ 3,257.44
Eligible Recipient #14	\$ 47,500.00	2.10%	\$ 3,094.57
Eligible Recipient #15	\$ 30,000.00	1.32%	\$ 1,954.47
Eligible Recipient #16	\$ 20,000.00	0.88%	\$ 1,302.98
Eligible Recipient #17	\$ 20,000.00	0.88%	\$ 1,302.98
Eligible Recipient #18	\$ 13,000.00	0.57%	\$ 846.94
Eligible Recipient #19	\$ 12,500.00	0.55%	\$ 814.36
Eligible Recipient #20	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #21	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #22	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #23	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #24	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #25	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #26	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #27	\$ 10,000.00	0.44%	\$ 651.49
Eligible Recipient #28	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #29	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #30	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #31	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #32	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #33	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #34	\$ 5,000.00	0.22%	\$ 325.74
Eligible Recipient #35	\$ 4,500.00	0.20%	\$ 293.17
Eligible Recipient #36	\$ 2,500.00	0.11%	\$ 162.87
Eligible Recipient #37	\$ 2,100.00	0.09%	\$ 136.81
Eligible Recipient #38	\$ 2,000.00	0.09%	\$ 130.30
Eligible Recipient #39	\$ 2,000.00	0.09%	\$ 130.30
Eligible Recipient #40	\$ 1,000.00	0.04%	\$ 65.15
Eligible Recipient #41	\$ 1,000.00	0.04%	\$ 65.15
Eligible Recipient #42	\$ 500.00	0.02%	\$ 32.57
TOTALS :	\$ 2,267,115.00		\$ 147,700.00

EXHIBIT C: ELIGIBLE RECIPIENT NOTICE

VIA UPS and EMAIL

[Eligible Recipient Name]

[Eligible Recipient Address]

**Re: In the Matter of EnviraTrends, Inc. and Russell F. Haraburda
(8:15-CV-01903-JDW-TGW)**

Dear [Eligible Recipient Name],

We are writing to inform you that there will be a distribution of funds in the above-captioned matter to those investors in the securities of EnviraTrends, Inc. who invested more than \$100.00, were not officers or directors of EnviraTrends, Inc. (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities), did not share an address with any officers or directors of EnviraTrends, Inc., and were harmed as a result of Haraburda's misappropriation of investor funds and false and misleading statements regarding the purpose of an investment, and the activities and financial condition of EnviraTrends, Inc. ("Eligible Recipients").

Background

On August 17, 2015, the Commission filed a complaint in the United States District Court for the Middle District of Florida alleging, inter alia, that EnviraTrends, Inc. ("EnviraTrends") and its founder and Chief Executive Officer, Russell F. Haraburda ("Haraburda") sold securities to the public in unregistered offerings based on false and misleading statements regarding the activities and financial condition of EnviraTrends and the purposes for which investors' funds would be used.

On August 20, 2015, the Court entered a final judgment against EnviraTrends and Haraburda. They were found jointly and severally liable for disgorgement of \$2,305,043.00 and prejudgment interest thereon in the amount of \$131,384.00. However, the Court waived payment of all but \$150,000 of the disgorgement and prejudgment interest due to Defendants' sworn representations in their Statements of Financial Condition submitted to the Commission. The Order authorized the Commission to hold the funds (collectively, the "EnviraTrends Distribution Fund") and propose a plan to distribute the Fund subject to the Court's approval.

The District Court for the Middle District of Florida has approved a distribution of the EnviraTrends Distribution Fund and the staff of the Commission has reviewed the defendants' records to identify the Eligible Recipients. The staff has determined that you are an Eligible Recipient who suffered a net loss of funds during the covered time period and will receive a distribution of funds.

Plan of Distribution

On _____, the Court issued an Order granting the Commission’s Motion for Order to Appoint Distribution Agent and Approve Proposed Distribution Plan in this matter.

A copy of the Distribution Plan is attached for your review. In the Distribution Plan, to protect private information, the names of Eligible Recipients, the amount of each Eligible Recipient’s total invested, proportional loss, and pro rata share of the distribution have not been made public. To assist in your review of the Distribution Plan, please note that you are Eligible Recipient # _____ in the distribution chart contained with the Distribution Plan. Also please note that the staff of the Commission has calculated your *pro rata* share of the Net Distribution Fund to be \$ _____.

In order to send you your distribution payment, we must have the following information:

1. Payment information—if you would like to receive your payment by check, please confirm that the exact name of the Eligible Recipient to receive the check and the complete address where the payment should be sent is as follows:

[Insert Eligible Recipient Address]

If you prefer to receive the payment by wire, please provide the bank information for an automated clearing house (ACH) transfer: the bank routing number, the account number and the name on the account.

2. Tax Identification Information – please provide the Social Security Number or Employer Identification Number for **[Insert Eligible Recipient]**.

Please provide the requested information at your earliest convenience via email to:

Keshia W. Ellis, Esq.
elliskw@sec.gov

Should you have any questions or concerns, please feel free to contact me at (202) 551-4406.

Regards,

Keshia W. Ellis, Esq.
Securities and Exchange Commission
Office of Distributions
Division of Enforcement

Enclosure:
Plan of Distribution

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2016, a copy of the foregoing Plaintiff Securities and Exchange Commission's Motion to Appoint Distribution Agent and Approve Distribution Plan and its accompanying proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Keshia W. Ellis
Keshia W. Ellis