

MICHAEL S. LIM (Va. Bar No. 76385)
limm@sec.gov
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
100 F St, NE
Washington, D.C. 20549
(202) 551-4659

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FACEBOOK, INC.

Defendant.

Case No. 3:19-cv-04241-JD

~~PROPOSED ORDER TO~~
**ESTABLISH A FAIR FUND,
APPOINT A TAX
ADMINISTRATOR AND
DISTRIBUTION AGENT, AND
APPROVE FUTURE FEES AND
EXPENSES**

The Court, having reviewed the Motion of Plaintiff Securities and Exchange Commission (the "SEC" or "Commission") for an Order (1) establishing a Fair Fund; (2) appointing Miller Kaplan Arase LLP ("Miller Kaplan") as tax administrator ("Tax Administrator"); (3) appointing RCB Fund Services, LLC ("RFS") as distribution agent; and, (4) authorizing payment of tax obligations and administration fees and expenses from the Fair Fund without further Court Order, and for good cause shown,

IT IS HEREBY ORDERED:

1. The Motion is **GRANTED**;

Fair Fund

2. A Fair Fund ("Fair Fund") is established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 [15 U.S.C. §7246(a)], as amended by the Dodd-Frank Act of 2010 [15 U.S.C. § 7246], for the \$100 million in civil penalties collected in the captioned matter. Any interest or earnings on the Fair Fund will be added to the Fair Fund to be used for the benefit of harmed

1 investors.

2 **Tax Administrator**

3 3. Miller Kaplan Arase LLP (“Miller Kaplan”) is appointed as tax administrator (the
4 “Tax Administrator”) of the Fair Fund and is authorized to execute all income tax reporting
5 requirements, including the preparation and filing of tax returns, for the Fair Fund.

6 a. As the Tax Administrator, Miller Kaplan shall be designated the Tax Administrator
7 of the Fair Fund, pursuant to Section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. §
8 468B(g), and related regulations, and shall satisfy the administrative requirements imposed by
9 those regulations, including but not limited to (a) obtaining a tax payer identification number, (b)
10 filing applicable federal, state and local tax returns and paying taxes reported thereon out of the
11 Fair Fund, and (c) satisfying any information, reporting, or withholding requirements imposed on
12 distributions from the Fair Fund, including but not limited to the Foreign Account Tax Compliance
13 Act. Upon request, the Tax Administrator shall provide copies of any filings to the Commission
14 staff.

15 b. The Tax Administrator shall be entitled to charge reasonable fees and expenses for
16 tax compliance services in accordance with its agreement with the Commission for the Tax Years
17 2019 through 2021. The Tax Administrator shall, at such times as the Tax Administrator deems
18 appropriate, submit a request to the Commission’s counsel of record for payment of fees and
19 expenses from the Fair Fund.

20 c. At such times as the Tax Administrator deems necessary to fulfill the tax
21 obligations of the Fair Fund, it shall submit a request to the Commission’s counsel of record, for
22 authorization to pay from the Fair Fund tax obligations of the Fair Fund.

23 d. The Commission is authorized to approve and arrange payment of all tax
24 obligations owed by the Fair Fund and the fees and expenses of the Tax Administrator directly
25 from the Fair Fund without further order of this Court. The Tax Administrator will submit invoices
26 of all fees and expenses incurred in connection with its respective duties to the Commission’s
27 counsel of record for review and, as appropriate, payment. All payments will be reflected in the
28 final accounting referenced below.

Distribution Agent

4. RCB Fund Services, LLC (“RFS”) is appointed as Distribution Agent (“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. Work with Commission staff to prepare a distribution plan for the Fair Fund to be approved by the Court;

b. Identify harmed investors through a claims process;

c. 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;

d. Quantify losses and distribution amounts, and distribute same;

e. Respond to investor- and distribution-related inquiries;

f. Work with the appointed Tax Administrator to ensure the Fair Fund complies with all tax obligations;

g. Take affirmative steps to ensure that any entities or individuals engaged by the Distribution Agent have no conflicts of interest that would keep them from fully and fairly exercising their duties for the Fair Fund;

h. Perform services in accordance with the pricing schedule and cost proposal submitted by the Distribution Agent to the Commission;

i. Submit quarterly progress reports to the Commission staff, in a format to be provided by the Commission staff, and filed with the Court or provided to the Commission for filing with the Court.

5. Upon completing its duties as set forth herein, the Distribution Agent, in consultation with the Tax Administrator, will jointly provide to the Commission counsel of record a final accounting in a form provided by the Commission’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 un-negotiated payments and the

1 costs and results of the same; statistics concerning payments made to individuals and entities; and
2 an affidavit in a format acceptable to the Commission's counsel of record summarizing its
3 activities as Distribution Agent.

4 6. The Distribution Agent may be removed *sua sponte* at any time by the Court or
5 upon motion of the Commission and replaced with a successor. In the event the Distribution
6 Agent decides to resign, it must first give written notice to the SEC's counsel of record and the
7 Court of its intention, and, if permitted, will not be effective until the Court has appointed a
8 successor. It will then follow instructions from the Court or a successor for relinquishing its
9 duties, including all records related to Fair Fund monies and property; and unless otherwise
10 ordered will within 30 days of resignation or removal, file with the Court a final accounting and
11 report in a format not unacceptable to Commission counsel along with any other information
12 requested by the Commission or the successor.

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

16 **IT IS SO ORDERED.**

17
18 Dated: August 17, 2020

